FEDERAL BUREAU OF INVESTIGATION
FOI/PA
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FOI/PA# 1365872-0

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FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

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b7C

Date of transcription 2/6/90

Omaha, Nebraska, was interviewed by Special Agents (SA) of the Federal Bureau of Investigation (FBI) and of the Internal Revenue Service who identified themselves as Special Agents of their respective departments. was interviewed at her place of employment at the UNIVERSITY HOSPITAL, Nuclear Medicine Office, Omaha, Nebraska. was being interviewed regarding her association with and provided the following information:

advised her date of birth is and Social Security Account Number is

advised she has known the family for several years and has attended church at the WEST HILLS PRESBYTERY with At the WEST HILLS PRESBYTERY, she met in the choir of the WEST HILLS PRESBYTERY CHURCH. She later sang with at the CENTRAL PRESBYTERY CHURCH in choir and were actively attending the PRESBYTERY CHURCH. was the church. At the time, was teaching at BURKE HIGH SCHOOL. advised left BURKE HIGH SCHOOL at the request of the Omaha Public Schools Administration. advised it was rumored was having young students over to his apartment and as a result he was asked to resign from his teaching position at BURKE HIGH SCHOOL where he had taught music. At their insistence, he left and as a result he attempted to obtain his Doctorate Degree from the UNIVERSITY OF NEBRASKA IN LINCOLN in Music. advised she loaned approximately $23,000 in the early 1970s by issuing a periodic monthly check for school and living expenses while he attended graduate school. This continued until such time decided he would not write a thesis and as a result failed Graduate School. discontinued loaning any further funds to for graduate school expenses. advised that over the years, has paid back a considerable amount of the $23,000, however, he has not completely repaid that amount of money.

advised she received most of her funds from two inheritances, one from her grandparents of property which was

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Investigation on 2/5/90 at Omaha, Nebraska File # Omaha 147A-571

by SA Date dictated 2/5/90

valued at approximately $100,000 and was sold in approximately 1986 or 1987. The other inheritance was left to her by her father in 1966 of an additional $100,000. [redacted] advised she has a total of approximately $200,000 from both inheritances. In addition, she has personal savings and has been employed with the UNIVERSITY HOSPITAL as a Nuclear Medicine Technician. She began her employment in September 1962.

[redacted] advised that because of her association with [redacted], she became a member of the FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). At the close of the credit union in November 1988, she received approximately $47,000 from three Certificate of Deposits (CD). She purchased CDs at the insistence and solicitation of [redacted] Manager of FCFCU. [redacted] advised [redacted] was a member of the PRESBYTERY CHURCH and choir and would often give choir members sale pitches regarding money markets and CDs available at FCFCU. [redacted] would solicit the sale and/or purchase of the CD by insisting that the certificates received rates which were insured by the NATIONAL CREDIT UNION ASSOCIATION (NCUA). The money was being used to help the poor and the north Omaha area would benefit by the purchase of a CD from FCFCU.

After [redacted] discontinued his graduate studies at the UNIVERSITY OF NEBRASKA AT LINCOLN, [redacted] asked [redacted] to hire [redacted] at FCFCU. [redacted] advised [redacted] told her of her request of [redacted] was hired. Soon after he was hired at FCFCU as the Accountant/Bookkeeper, he began to pay back his college loan to [redacted].

[redacted] advised her purchases of the CDs were made at various times, she cannot recall without specifically obtaining the documents at her residence regarding the purchases. However, she received no monthly interest, all monies were rolled over, and the only monies she received from FCFCU was at the close of the credit union in 1988 when she cashed in her CDs. At the time, she received approximately $50,000 which the [redacted] were aware of. Prior to the close of the credit union, all monies were rolled over and re-invested. At the time the CD was to expire she would receive letters from FCFCU signed by [redacted] regarding the re-investment or rolling over the CD at which time she would roll the CD over and re-invest the money in FCFCU.

In the fall of 1989, she was invited to the [redacted] residence where [redacted] and [redacted] proposed a business deal in which [redacted] would receive three $10,000 checks in a loan transaction from [redacted] and a total

b6
b7C

of $30,000 would be loaned to the [redacted] for expenses being incurred by attorney fees in the alternative sentencing counseling she and [redacted] were receiving. The $30,000 would be paid back from the estate of [redacted] and the total $30,000 would be paid back. A note was signed by [redacted] and [redacted] the Administrator of the [redacted] estate. [redacted] advised she loaned the money, a total of $30,000, in three checks, $10,000 each, and were given to [redacted] requested the money to be given in $10,000 each so the NCUA would not find out about the funds.

[redacted] advised that in December 1989, [redacted] and [redacted] requested [redacted] to attend another dinner at their house at which time an additional $20,000 was requested for expenses they were incurring in attorney fees and the alternative sentencing counseling classes they were receiving. [redacted] advised she loaned the $20,000. No new loan was signed, however, they agreed a total of $50,000 would be paid back to her at the death of [redacted] from the estate of [redacted] advised if she did not loan the money of $20,000 to them, they would be losing the house and all the other material goods they had. [redacted] advised this would be the total $50,000 they were aware she had as the [redacted] are unaware of the additional funds she had inherited from the various relatives' estates. [redacted] advised that at the time the monies were loaned, she had a personal conversation with [redacted] revealed to her that several antiques which they have in their possession are being stored in an unknown location until such time they can sell those antiques without the NCUA or other government agencies knowing of the sale and possession of the antiques. [redacted] advised she was told this for further assurance the money would be paid back to her. [redacted] advised she is unaware where the antiques are being stored, but she is of the opinion they are stored somewhat close to [redacted]

[redacted] advised she has known the [redacted] family for many years and always had a feeling they were living a lavish lifestyle that they could not afford. Historically, [redacted] had a public job and [redacted] never had steady work. It is her opinion money had to come from some place and she believed it possibly was from FCFCU at [redacted] job. Because of the money they were spending and of the trips they were taking, she suspected they were obtaining money from an unknown source.

[redacted] advised she was aware of [redacted] lifestyle, however, she believed the money was from an inheritance received by [redacted] from [redacted] family and that [redacted]

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b7C

[redacted] was known as [redacted] and she was told this by [redacted]

[redacted] advised she has no knowledge of CONSUMER SERVICES ORGANIZATION (CSO) and is not aware of how grants were received or if grants were received. She has no knowledge of grant letters and could not provide any information of letters made up on behalf of FCFCU by the [redacted] family.

[redacted] advised she loaned the money to the [redacted] family because she believed it was the Christian thing to do. [redacted] personally believes the firing of [redacted] and the way the whole transaction was handled by the PRESBYTERY CHURCH leaders was inappropriate and as a result she felt the best thing to do was to assist the [redacted] at their time of need. [redacted] advised the above funds which were loaned to the [redacted] was her money and she loaned it to them on her own free will realizing there was a risk of not receiving the money back.

[redacted] advised she would provide all the records she has available which have been subpoenaed by the NCUA and is willing to meet with the NCUA and assist in this investigation.

OM 147A-571
WRC:jf

The following investigation was conducted by Special Agent (SA) [redacted] at Omaha, Nebraska, on February 8, 1990: b6 b7C b7D

On Thursday, February 8, 1990, at approximately 10:00 a.m., Detective [redacted] Omaha Police Division (OPD), Omaha, Nebraska, telephone number (402) 444-7867, came to the office of the FBI in Omaha, Nebraska, in regard to information he had obtained reference the investigation of the FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] advised SA [redacted] that earlier this morning he had received a telephone call on the OPD Crimestoppers line, and related the content of that conversation as follows:

147A-571-485

At 8:25 a.m. on this date, February 8, 1990, an unidentified male caller who wished to remain anonymous, called the OPD Crimestoppers telephone line. The caller advised that he was [redacted] of [redacted] Omaha, Nebraska. The caller further stated that [redacted] who is a white female, about [redacted] years of age, used to work for [redacted] at the FCFCU. The caller went on to say that [redacted] The caller advised [redacted] that [redacted] has never been questioned in regard to the credit union failure, which causes the caller to believe that there was a cover-up involved. The caller further advised that the [redacted] keep two large German Shepherd dogs on their property to keep people away, and that Mr. [redacted] who is in the construction business, has a very large collection of guns. In response to the caller, [redacted] checked the city directory and found a [redacted] listed at the address provided by the caller. The city directory further noted she was employed as an Administrative Assistant for the FRANKLIN CREDIT UNION in 1989. [redacted] notified OPD Captain [redacted] who then contacted Acting Deputy Chief [redacted] who instructed [redacted] to hand carry a copy of the Crimestoppers report to the FBI. [redacted] prepared the report, which is attached to this insert, and hand delivered it to SA [redacted] at approximately 10:00 a.m. on this date. All information related above is included in the Crimestoppers questionnaire, except for the fact that the caller was [redacted] which [redacted] felt would tend to identify the caller if the questionnaire was ever subpoenaed for court.

[redacted]

147A-571-646

Upon receipt of the information from [redacted] SA [redacted] conducted an indices check of Omaha automated files in regard to [redacted] It was found that [redacted] female, date of birth [redacted] Social Security Account Number [redacted] Omaha, Nebraska, telephone number [redacted] had been indexed into the FRANKLIN CREDIT UNION file (147A-571) in serial 485 on May 18, 1989, and further, that this reference was updated on January 8, 1990. b6 b7C

On the same date, SA [redacted] case agent in the FRANKLIN investigation, was telephonically notified by SA [redacted] of the information received from [redacted] SA [redacted] advised that [redacted] had previously been interviewed in regard to her employment and involvement in the FRANKLIN CREDIT UNION investigation. SA [redacted] asked that the contact with Detective [redacted] be documented to the file for further investigative action on his part.

CONFIDENTIAL

OMAHA POLICE DIVISION
CRIME STOPPERS QUESTIONNAIRE

ORIGINAL

CONFIDENTIAL

Crime Stoppers
505 South 15th Street
Omaha, Nebraska 68102
444-7867

No. B-2046

Day of this Report Thurs Date of this Report 8-Feb-90 Time of this Report 08:45

Person Taking Report [redacted] Serial No. [redacted] b6 b7C

1. **TYPE OF CRIME:**

Homicide ____ Sex Crime ____ Armed Robbery ____ Burglary ____ Arson ____
Larceny ____ Auto Theft ____ Assault Felony ____ Fugitive ____ Fraud X
Narcotics ____ Vandalism ____ Welfare/Abuse ____ Kidnapping/Abduction ____
Other/Type ____
Specifics RB No. [redacted] Area [redacted]

2. **SUSPECT INFORMATION:**

Suspect No. 1 [redacted]
Name Address

Suspect No. 2 ____
Name Address

Other Suspects: ____

Suspect's known hangouts or known associates: ____

Current location of suspect: ____

Is suspect armed: ( ) Yes ( ) No ( ) Unknown What type weapon: ____

3. **PHYSICAL DESCRIPTION OF SUSPECT:**

Suspect No. 1: Age ____ Race ____ Sex ____ Height ____ Weight ____ Hair Color ____ Length ____
Eye Color ____ Noticeable marks, defects, scars, tattoos ____

Suspect No. 2: Age ____ Race ____ Sex ____ Height ____ Weight ____ Hair Color ____ Length ____
Eye Color ____ Noticeable marks, defects, scars, tattoos ____

Other(s): ____

Has suspect ever been arrested: ( ) Yes ( ) No ( ) Unknown

Agency: ____ Date: ____ Charge: ____

Is the suspect a drug addict: ( ) Yes ( ) No ( ) Unknown Type Drug: ____

4. **VEHICLE INFORMATION:**

Make ____ Model ____ Year ____ Color ____
License No. ____ State ____ Other ____
Was a Trailer Used? ____ Type ____ Color ____ Lic. ____

5. **FACTS OF THE CRIME:**

Victim Information: ____
Name Address Telephone

Date, Time, Location of Occurrence: ____

6. **FACTS OF CRIME:** Caller said that [redacted] who is a wht/female about [redacted] used to work for [redacted] Caller went on to say that [redacted]

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b7C
b7D

Are there any other crimes possibly involving the suspect(s): been questioned and the caller feels there is a cover up.

7. **WITNESS INFORMATION:**

Were there any other witnesses: ( ) Yes (X) No ( ) Unknown

Witness _____
Name Address Telephone

Will the witness testify: ( ) Yes (X) No

8. **INFORMANT INFORMATION:**

Does the informant wish to remain anonymous: (X) Yes ( ) No

Is informant on probation or parole: ( ) Yes (X) No

If Yes, informant's code number: _____

If No, informant's _____
Name Address Telephone

Will informant testify: ( ) Yes (X) No

Does informant know where any additional evidence might be found: _____

CRIME STOPPERS CONTACT: _____
Name Date Time

INVESTIGATOR notified by telephone: _____
Name Agency Date Time

Disposition: _____

Copy of this form Return to: Crime Stoppers Office Room 402 Date _____

OMAHA POLICE DIVISION

ORIGINAL

Page No. ____ of ____ Pages

☐ CONTINUATION ← CHECK ONE → SUPPLEMENTARY ☐

R.B. No.: B-2046

Offense:	☐ Victim Suspect ☐	Address:
Day/Date/Time: Original Report: Thur - 8 - Feb 90		Day/Date/Time: This Report:

b6
b7C

The [redacted] are said to keep two Large german Shepard dogs on the property to keep people away. Mr [redacted] is said to be in The Const business and has a very Large collection of guns, The city directory does show That a [redacted] is listed as a admn asst for Franklin credit union in 1989.

Capt [redacted] advised who contacted acting Dep. Chief [redacted] reporting officer instructed to hand carry this report to the FBI

Report Typed By:	Date:	Time:	Signature Reporting Officer/Serial No.:
Approved By: (Commanding Officer/Serial No.)			

0 (84) OMAHA, NEBRASKA

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 2/20/90

TO : DIRECTOR, FBI (147-2829)
ATTENTION: FBI LABORATORY HANDWRITING SECTION

FROM : SAC, OMAHA (147A-571) (P)

SUBJECT: [redacted] b6 b7C
ET AL;
FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU);
ET AL;
FAG - HUD - IRS;
BF&E; WF; MF
OO: OMAHA

Re Omaha airtel to the Bureau, dated 6/28/89, and Bureau Laboratory results to Omaha, dated 8/22/89.

Enclosed for the Bureau are handwriting exemplars of [redacted]

REQUEST OF THE BUREAU:

Bureau is requested to conduct handwriting examination of original documents previously submitted in referenced Omaha airtel with enclosed exemplars. Examination is requested to determine if the signatures of [redacted] were the signatures submitted on the original documents.

It is requested the examination results be forwarded to Omaha by 4/30/90.

For the information of the Bureau, previous examination was conducted under lab number 90703016 D XH.

3 - Bureau (Enc. 2)
2 - Omaha
MAM:tle
(5)

1*

[redacted]

147A-571-667

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

Search
Indexed
Filed

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 2/16/90

[redacted] Omaha, Nebraska, [redacted] was interviewed by Special Agent (SA) [redacted] who identified himself as a Special Agent of the Federal Bureau of Investigation (FBI). [redacted] was advised he was being interviewed regarding FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] provided the following information:

[redacted] advised his date of birth is [redacted] Social Security Account Number [redacted] PATHFINDER DINNER TRAIN, which is an excursion train from Council Bluffs, Iowa, to the Hancock Junction and other areas of western Iowa. [redacted] advised PATHFINDER TRAIN was formerly an excursion train on the tracks from Fremont to Hooper, Nebraska. It was originated in 1986. [redacted]

[redacted] advised he was employed at FCFCU for approximately a one-year period, starting in late 1980 or early 1981, and was employed at FCFCU to recruit depositors and to edit grant writing reports. [redacted] advised the grants were being written by [redacted] and another individual in an attempt to obtain grants and operating funds on behalf of FCFCU. It was his duty to edit those grant reports, which were submitted to [redacted] upon the final draft. [redacted] would then take the grants and do a personal presentation on behalf of FCFCU in an attempt to obtain the grant. [redacted] is unaware of any grants which were funded, and advised he would not know whether grants were funded. Conversations with [redacted] revealed that FCFCU and CONSUMER SERVICES ORGANIZATION (CSO) operated on grants that were funded by the issuance of a grant report by FCFCU. In addition to the writing and editing of grants, he was responsible for soliciting various civic organizations and church organizations in an attempt to solicit depositors into FCFCU. Depositors were solicited to deposit their funds with FCFCU in an attempt to help the poor, provide counseling of a consumer nature to the poor, and help the North Omaha lower-income area. FCFCU at the time could not pay the going market rate of interest, and appealed to the individual church organizations or groups by helping the North Omaha area.

Investigation on 2/5/90 at Omaha, Nebraska File # OM 147A-[redacted]

by SA [redacted] Date dictated 2/5/90

[redacted] advised the grants were being submitted to HUD for CDHUB funds and to regional church organizations. He is unaware of any funds received from any of the organizations, or HUD in particular.

[redacted] took two trips while employed with FCFCU. He advised his tax W-2 would reflect that he was an employee of FCFCU. While in the employ of FCFCU, he took a trip to Washington, D.C., sometime in 1981, which was a trip to promote FCFCU and the grants being submitted to HUD. [redacted] could not recall who he traveled with or who he met with in Washington, D.C. [redacted] advised he took another trip to Chicago, Illinois, along with [redacted] and [redacted] which was a trip to promote the FCFCU and CSO concept in a neighborhood redevelopment program. All expenses for the trip were paid for by FCFCU, and he believes through [redacted] credit card, all expenses, including the hotel and food, were paid for by [redacted].

[redacted] advised while employed with FCFCU, he did not receive any gifts, cars, or apartments. No special clothing or furniture was purchased on his behalf. [redacted] advised he did receive small gifts, possibly at holiday times, when other employees also received gifts.

At the end of 1981, he submitted his resignation, quit, and became an employee of FIRSTIER or REAL BANK MORTGAGE, and later also became a loan officer for SUPERIOR MORTGAGE.

[redacted] advised in November, 1988, the PATHFINDER DINNER TRAIN had a railroad track dedication/open house which [redacted] CATERING was hired to cater. [redacted] advised he had discussions with [redacted] regarding the catering and the preparation of the food for the gathering. This was the only time [redacted] CATERING was ever hired, and he could not recall the exact amount of money which was paid to [redacted] CATERING. All additional catering at PATHFINDER TRAIN is performed by HY-VEE CATERING because of their volume of purchasing and their various locations throughout the country, they are a better catering company which could provide a better product than [redacted] CATERING. At no time did PATHFINDER DINNER TRAIN or [redacted] consider utilizing [redacted] CATERING on the train when it was originally concepted.

[redacted] advised while in the employ of [redacted] and FCFCU, he did accompany [redacted] to the airport and would take care of [redacted] personal mail at his house. He believed [redacted] to have lived in a different location than what has been published in the newspaper. He believes [redacted] to have received his money from his other

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businesses, and believes that grants were being funded. Since the number of employees at FCFCU and CSO were always increasing, he never questioned how the funds were received or whether share drafts or share certificates were obtained and then utilized by [redacted] for personal gain. While accompanying [redacted] on various trips, he never witnessed him to be using narcotics; however, he has no personal knowledge whether [redacted] utilized narcotics or ever purchased narcotics while on the various trips that he accompanied [redacted] advised he could not provide any further information regarding this matter; however, if review of his records revealed additional information, he would contact the FBI immediately.

February 19, 1990

MEMORANDUM

TO: [redacted] b6 b7C

FROM: Anonymous Affiants

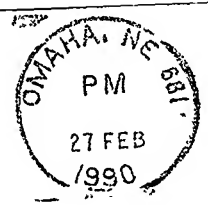
RE: Suggested course of action

A key component of the [redacted] situation is that moneys were used by the [redacted] for personal and political purposes, and the political avenues lead to the Republican Party, and through the Erickson & Sederstrom, P. C., and some of their attorneys who were hired from time to time to give [redacted] and the firm a Republican image. Employee attorneys came from the Hal Daub office, the local scene-[redacted] and a prominent former National Committeeman, former governer Charlie Thone, among others. This shifted the image from the democratic, Jewish firm that had evolved. Key attorneys were hired who had advanced themselves within the strata of the State and local bar association, and the discipline body, both locally and at the state level. [redacted] had personal problems within the state and district court levels related to a festering legal malpractice situation centered around Judge John Grant and lawyer [redacted] and others, which included at a peak time, every democratic judge appointed by Exon and others; and spread to the Thone judges, to include Keith Howard and Steven Davis, who continues the district court protection with Howard protecting the entire group using the state Judicial Qualifications Commission. [redacted] protected on the Inquiry Committee, and former County Attorney [redacted] blocked criminal prosecution, former Attorney General Paul Douglas blocked state action, and former Chief Justice Norman Krivosha became a protector from the day he became chief justice. Many others are involved.

We suggest to you that the trail will lead to [redacted] and others via the Erickson & Sederstrom, P. C. law firm, and will involve Judge Lyle Strom and Judge William Cambridge and all Supreme Court judges except Fahrnbruch, and to include Robert Spire and William Howland and Eugene Crump, and RON LAHNERS at the federal level, which now extends through CV 88-0-205 to a cover-up by 8th Circuit Judge Donald Lay. YOUR OWN RECORD in Lincoln shows a "decision" contrary to law as you left office in favor of [redacted] and his law firm, which joined Erickson & Sederstrom, P.C. The appeal of your decision was unlawfully dismissed by [redacted] et al misusing Rule 7A.

Our current Douglas County Attorney and Judge James Buckley are not involved in any of this. But [redacted] and [redacted] money is.

Serial 669



Agent in Charge, FBI
Zorinsky Federal Building
215 N. 17th Street
Omaha, NE 68102 PRIORITY MAIL

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 2/26/90

was interviewed by Special Agent (SA) of the Federal Bureau of Investigation (FBI) and SA of the Internal Revenue Service (IRS). thereafter provided the following information: b6 b7C

was being interviewed at her attorney's office, advised that upon the advice of her attorney, she asked a long time personal friend, to borrow a total of $50,000 in the latter part of 1989. In November, 1989, requested $30,000, which consisted of three checks of $10,000 each. requested to issue the checks in $10,000 amounts because of various lawsuits being filed against her for payment of outstanding bills. The $10,000 checks were deposited into a bank accout at DOUGLAS COUNTY BANK in amounts less than $10,000. Since less than $10,000 is deposited, no report is generated to anyone regarding the money. believes no company could put a clain on the money because of this. An additional $20,000 was requested in December, 1989 from advised a personal note signed , who is responsible for the estate of is upset with because of involvement in FCFCU, and as a result has decided to divide her estate equally between is responsible for the execution of the estate upon her death. Upon her death the loans will be paid back to for the total of $50,000. advised she used the money to pay outstanding bills.

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advised in particular the UNITED BANK OF MISSOURI has sued for approximately $1,600 to $1,800 which is being heard in the courts.

advised prior to the close of the FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU), she had given two boxes of old family antiques to her children. These pieces are being held by These antiques were purchased prior to her association with FCFCU. They include an antique table and a victorian desk and other small pieces. All can be proven to have been purchased prior to her association with FCFCU.

Investigation on 2/23/90 at Omaha, Nebraska File # OM 147A-1570

by SA Date dictated 2/26/90

147-571-670

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[redacted] advised she is unfamiliar with signing any incorporation papers regarding the Neighborhood Retail Association. She said numerous papers were sent to her either by [redacted] for her signature, including incorporation papers. She signed most papers without actually reading the document.

[redacted] advised the FRANKLIN USA was a national model for FCFCU. [redacted] attempted to obtain federal money to finance FRANKLIN USA. FRANKLIN USA was developed to locate similar FCFCUs throughout the United States. [redacted] believes the only credit union [redacted] ever assisted in was the ST. JOHN CHURCH CREDIT UNION in Harlem, New York. [redacted] charged a fee to Harlem, New York for this service, but no grant was obtained to provide assistance through FRANKLIN USA. [redacted] is of the opinion that FRANKLIN USA used FCFCU's money rather than making money for FCFCU.

[redacted] advised the FRANKLIN HOUSING CORP was an attempt by Attorney [redacted] to obtain Housing and Urban Development money for the development of low-income homes, through what was called the 202 funds to build houses on 26th and 28th and Dodge in Omaha, Nebraska. This was not successful.

[redacted] could not provide any information regarding a postal box obtained in the Florence Station. She is only aware of the various postal boxes obtained for her business and the one obtained to obtain grant verifications through the mail in Lincoln.

[redacted] provided a copy of the lawsuit being filed against her and her husband by the UNITED BANK OF MISSOURI.

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff,	)	Case Number; CR89-0-63
vs.	)	MOTION FOR BILL OF PARTICULARS
ALICE PLOCHE KING, Defendant.	)	

COMES NOW the Defendant, Alice Ploche King, and pursuant to Fed. R. Crim. P. 7(f), moves the Court for an Order directing the Government to file a Bill of Particulars of the following matters embraced within the indictment;

1. With respect to the allegation that, "On or about October 6th, 1986, the defendants caused a wire transfer in the amount of $1,000.00 from the State of Nebraska, to Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

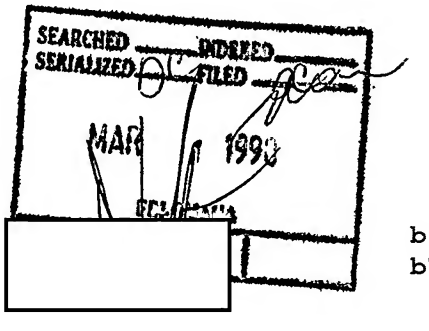
(b) The name and current address of every other person involved in the transfer.

2. With respect to the allegation that, "On or about October 24th, 1986, the defendants caused a wire transfer in the amount of $2,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

149A-571-671



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3. With respect to the allegation that, "On or about December 1st, 1986, the defendants caused a wire transfer in the amount of $2,500.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

4. With respect to the allegation that, "on or about January 22nd, 1987, the defendants caused a wire transfer in the amount of $3,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

5. With respect to the allegation that, "On or about March 5th, 1987, the defendants caused a wire transfer in the amount of $3,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

6. With respect to the allegation that, "on or about April 17th, 1987, the defendants caused a wire transfer in the amount of $1,500.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

7. With respect to the allegation that, "On or about May 20th, 1987, the defendant caused a wire transfer in the amount of $3,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

8. With respect to the allegation that, "on or about July 6th, 1987, the defendant caused a wire transfer in the amount of $3,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

9. With respect to the allegation that, "On or about July 5th, 1988, the defendant caused a wire transfer in the amount of $1,000.00 from the State of Nebraska, to the Adams National Bank for the purpose of setting forth the scheme to defraud," state:

(a) Which defendant "caused" the wire transfer; and

(b) The name and current address of every other person involved in the transfer.

10. With respect to the allegation that, "On or about the 9th day of June, 1988, to on or about the 17th day of June, 1988, the defendant, using funds converted from the King's personal account at the Adams National Bank, wrote a check for $50,000.00 made payable to Franklin Community Federal Credit Union, state:

(a) Which defendant "caused" the check to be deposited;

(b) The name and current address of every other person involved in the transfer.

11. With respect to the allegation that, "on or about the 11th day of July, 1988, to on or about the 19th day of July, 1988, the defendant, using funds converted from the King's personal account at the Adams National Bank, wrote a check for $100,000.00 made payable to Franklin Community Federal Credit Union; state:

(a) Which defendant "caused" the check to be deposited;

(b) The name and current address of every other person involved in the transfer.

12. With respect to the allegation that, "From or about the 1st day of July, 1976, the defendant, did unlawfully, willingly, and knowingly conspire with the Harveys and others,

(a) Please state the time and location when the agreement was originally reached;

(b) Please state whether the agreement was expressed or implied;

(c) Please state the date, time, and place Alice Ploche King first met with each co-conspirator with whom the Goverment claims she conspired;

(d) State specifically what agreement the defendant entered into, with whom said agreement was made, and day, time and place of said agreement;

(e) State the nature of the act, and the day, time, and place of said act, by which the defendant first manifested that she was part of the alleged conspiracy. In other words, what is the first act the defendant is accused of committing, in furtherance of the alleged conspiracy.

(f) Please state any and all overt acts as to Count I of the indictment, about which testimony was presented to the Grand Jury and about which the Government intends to present testimony at the time of trial, and which overt acts could have been included by the addressment of the indictment but were not.

13. With respect to the allegation that Mrs. King "would direct transfer of money from Franklin Community Federal Credit Union

to her own personal banking accounts," state:

(a) The specific date each transfer was made;

(b) The account from which the transfer was drawn;

(c) The recipient account of each transfer;

(d) The amount of each transfer;

(e) How Defendant, Alice P. King, allegedly "caused" each transfer;

(f) The name and current address of each person who was present at the scene of the transfer.

14. With respect to the allegation that Mrs. King "would provide explanation of the source of the money used for personal expenditures as being that of gifts or inheritances from relatives or that of profits from their independent business concerns, "state:

(a) The part of defendant's testimony which the Government relies on as being false, setting forth in particular the alleged matter therein contained;

(b) The time and place where defendant allegedly committed the acts above described, and

(c) The name and current address of each and every person who was present at the scene of the alleged acts above described.

15. With respect to the allegation "during the period of 1984 through November 4th, 1988, the conspirators embezzled and misapplied Franklin Community Federal Credit Union funds in the following approximate amounts for the use indicated: King Family, $10,223,217.00" state:

(a) The funds allegedly misapplied solely by defendant, Alice P. King, and show how allocation to defendant, Alice P. King, was determined;

(b) The funds allegedly misapplied jointly by defendants and show how allocation to each defendant was determined.

16. With respect to the allegation "from time to time and after the closing of Franklin Community Federal Credit Union by the NCUA, Mr. King and Mrs. King would provide false and misleading statements and testimony in order to cover up their involvement in this conspiracy and to preclude detection by authorities," state:

(a) Specifically what testimony and/or statements by defendant the Government alleges was false;

(b) The time and place where defendant allegedly made false statements or gave testimony;

(c) The name and current addresses of each and every person who was present at the scene of the alleged statements and/or testimony.

In support of this Motion, the Court is respectfully referred to the attached Memorandum of points and authorities.

Dated this 8th day of February, 1990.

ALICE PLOCHE KING, Defendant.

By _____

Jerold V. Fennell #11266
Suite 270 Regency Court
120 Regency Parkway
Omaha, Ne 68114
(402) 393-1286
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Bill of Particulars was personally served on the following: Steve E. Achelpohl of 100 Historic Library Plaza, 1823 Harney Street, Omaha, Nebraska 68102 and Assistant U.S. Attorney Thomas D. Thalken, Federal Building, Omaha, Nebraska 68102 on the 8th day of February, 1990.

_____

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,	)	CASE NO. CR89-0-63
Plaintiff,	)	
vs.	)	MOTION
LAWRENCE E. KING, JR. and ALICE PLOCHE KING,	)	
Defendants.	)	

COMES NOW the Defendant, Lawrence E. King, Jr., by and through his court-appointed counsel, and moves this Court for an Order directing Tom Harvey to produce before the Court, for inspection by Defendant and his counsel, on February 23, 1990, or at such other time and place as the Court may direct, the following items, which items are designated in a subpoena directed to the said Tom Harvey, a copy of which subpoena is attached hereto, marked Exhibit "1" and incorporated herein by this reference.

This Motion is made on the grounds that the Defendant cannot properly prepare for trial without production and inspection in advance of trial of the items sought.

Dated this 23 day of January, 1990.

LAWRENCE E. KING, JR., Plaintiff

By: Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000
His attorneys

167 Nr 571-672

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon Thomas D. Thalken, First

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Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101, by depositing in the U.S. Mail, postage prepaid, on this 23 day of January, 1990.

Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott

AO 90 (Rev. 5/85) Deposition Subpoena ⊕

United States District Court

DISTRICT OF Nebraska

UNITED STATES OF AMERICA

V.

LAWRENCE E. KING, JR. and
ALICE PLOCHE KING,

~~DEPOSITION~~ SUBPOENA
DUCES TECUM

CASE NUMBER: CR89-0-63

TYPE OF CASE	SUBPOENA FOR
☐ CIVIL ☒ CRIMINAL	☐ PERSON ☒ DOCUMENT(S) or OBJECT(S)

TO: Tom Harvey

YOU ARE HEREBY COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME
Magistrate Courtroom Edward Zorinski Federal Building 17th & Capitol Streets Omaha, NE 68101	February 23, 1990 9:00 A.M.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

See Exhibit "A"

☐ *Please see additional information on reverse*

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and setting forth, for each person designated, the matters on which he will testify or product documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

U.S. MAGISTRATE OR CLERK OF COURT	DATE
(BY) DEPUTY CLERK	

This subpoena is issued upon application of the:

☐ Plaintiff ☒ Defendant ☐ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:
Steven E. Achelpohl
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000
ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

EXHIBIT 1

PEXGAD-Bayonne, N. J.

*If not made in open court

EXHIBIT "A"
To Tom Harvey Subpoena

1. All records of your bank or other financial accounts from 1976 until December 31, 1988, including without limitation, canceled checks, check registers, statements of account, deposit slips, withdrawal slips, financial summaries, signature cards, and related documents.

2. All records of your investments (including stocks, bonds, equity securities, debt instruments) from 1976 until December 31, 1988, including without limitation, statements of investments, accounts, prospectuses, stock certificates and debt instruments.

3. All records of the investments of Lawrence E. King, Jr., Alice Ploche King, or any business in which the Kings or any one of them hold or held any interest, from 1976 until December 31, 1988, including without limitation, statements of investments, accounts, prospectuses, stock certificates and debt instruments.

4. Your federal tax returns (forms 1040 or 1040A) for the years 1976 to 1988.

5. Any financial statements of Thomas Harvey prepared between 1976 and November 4, 1988.

6. A copy of the presentence report of Thomas Harvey in United States v. Harvey, et al., Cr. No. 89-0-75.

7. All travel records of Thomas Harvey from 1976 to November 4, 1988, including without limitation, airline tickets, train passes, itineraries, travel plans or similar documents, relating to trips outside of the state of Nebraska from 1976 to November 4, 1988.

8. All records of credit card accounts, in the name of Thomas Harvey (whether joint or sole accounts), including receipts, invoices, tickets, statements of account, bills, or similar document, for the period 1976 to December 31, 1988.

9. All day books, day timers, diaries, calendars, or similar records of events maintained by Thomas Harvey or on his behalf at any time from 1976 until November 4, 1988.

10. All documents, records, receipts, inventories, or other writings or tangible things which show or relate to property taken from you by the Federal Bureau of Investigation, National Credit Union Administration, Internal Revenue Service, or other federal or state agency, in connection with

① Comm Bank 511-013 opened 1982 – 11/21/88
Checks
Statements FCFCU checks

7 8/25/89 – Peat Wankuk received

② 1/1/75 – 12/31/88 personal
Waddell + Reed Brokerage

Phs account at FCFCU – 1033
Share
loan acount

PW/ Dean Witter - Reynolds – personal acc
opend 5/13/87 – 11/89

Piper Jaffe personal
opened 7/82 – 12/88

Joint acc Mary Jane
1st National Bank of Omaha 7/81 – 1/89 Present
~~Checking~~ M.C. - Mastercard

Honest Tom + MH Auto loan

any investigation of the Franklin Community Federal Credit Union, Lawrence E. King, Jr., Thomas Harvey, Mary Jane Harvey,

or related investigation, since on or after November 4, 1988.

11. All property, documents or tangible things removed by you or anyone at your direction from your residence, from the residence of Mary Jane Harvey, from the residence of Billy Harvey, from the residence of Cindy Harvey, or from the Franklin Community Federal Credit Union or Consumer Services Organization, between July 1, 1988 and December 31, 1988.

12. All letters, correspondence, notes, memoranda, or other writings, between yourself and any of the following: Mary Jane Harvey, Cindy Harvey or Billy Harvey, from July 1, 1988 until the present, relating to the investigation of the Franklin Community Federal Credit Union, or Lawrence E. King, Jr., or related investigations.

13. All telephone bills and records, including long distance billings, statements of account and similar records, relating to telephone usage at the residence of Thomas Harvey from July 1, 1988 to December 31, 1988.

14. All documents including invoices, maintenance records, manuals and similar documents, relating to the purchase, maintenance or use of computer hardware or software, whether for yourself personally or for the Franklin Community Federal Credit Union, whether such computer hardware or software was located at the FCFCU or at any other location including, without limitation, the residences of Thomas Harvey, Mary Jane Harvey, Billy Harvey or Cindy Harvey.

15. All computer software and hardware used by you at any time on or before November 4, 1988, whether used by you personally or in connection with your employment at FCFCU or CSO.

16. All records of the FCFCU, CSO, Lawrence E. King, Jr., Alice Ploche King, or any businesses in which the Kings hold or held an ownership interest.

17. All mechanically recorded communications, whether video or audio, relating in any manner to FCFCU, CSO, Lawrence E. King, Jr., Alice Ploche King or any businesses in which the Kings hold or held an ownership interest.

18. All records, documents, or tangible things, relating to money, cash, checks, credit card receipts, evidences of investments, or property of any kind, of Lawrence E. King, Jr., Alice Ploche King, or any businesses in which they held or hold an

ownership interest.

19. All passports (including visas or similar travel documents) or copies of passports issued to you from 1976 to November 4, 1988.

20. All correspondence, documents, or writings of any kind, relating to the transfer of property of any kind valued in excess of $500 between or among any of the following: Cindy Harvey, Thomas Harvey, Mary Jane Harvey, Billy Harvey, from 1976 to December 31, 1988.

all the data Base FBI

PETER, PETER & FENNELL
ATTORNEYS AT LAW

William F. Peter
Jerold V. Fennell
Michael A. Smith
William A. Peter (Dec'd)
Carl J. Peter (Dec'd)

Suite 270 Regency Court
120 Regency Parkway
Omaha, Nebraska 68114
Telephone: 402/393-1286

January 30, 1990

[redacted]
Assistant U.S. Attorney
Federal Building
Omaha, Nebraska 68102

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Re: United States of America
vs.
[redacted]
Case #CR89-0-63

Dear Mr. [redacted]

Pursuant to the Reciprocal Discovery Order entered by the Court, I am forwarding to you the handwriting report of [redacted] dated January 13th, 1990.

Very truly,

[redacted]

JVF:d
encl
cc: [redacted]

147A-571 FBI 147A 571-673

RECORD
SEARCHED INDEXED
SERIALIZED FILED
FEB 05 90
MAR 1 1990
U.S. ATTORNEY
OMAHA

LABORATORY REPORT

Re: [redacted]

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[redacted]
Examiner of Questioned Documents

2117 Castelar Street
Omaha, NE 68108

Telephone 341-0321
(Area Code 402)

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REPORT OF EXAMINATION

Re: [redacted]

I. MATERIAL SUBMITTED

The following material was submitted for examination by Mr. [redacted] Attorney at Law of Omaha, NE:

Q-1. Reproduced copy of a personalized check imprinted [redacted] N.W. Washington, D.D. 20008. Check is Nc. 155, made payable to Franklin Credit Union for the of 100,000.00 with signature of maker written as Mrs. [redacted] Check is dated July 11, 1988.

Q-2. Reproduced copy of a personalized check imprinted as on Item Q-1. Check is No. 211, dated June 9, 1988, made payable to Franklin Credit Union for the amount of $50,000.00 and bears a signature of maker written as Mrs. [redacted]

K-1. Reproduced copies of twenty-six (26) pages of handwriting examplar forms dated December12, 1988. The writing and signatures [redacted] appearing on the submitted forms has been submitted as being the known writing of [redacted]

II. PROBLEM

Is the writing and signatures Mrs [redacted] appearing on Items Q-1 and Q-2 and the writing and signatures of [redacted] appearing on Items K-1 of common authorship?

III. OPINION

Based upon the material submitted for examination and after weighing and reweighing the evidence at several sittings, my conclusions are:

1. The reproduced copies of Items Q-1 and Q-2 are of very poor quality and no "conclusive" opinions as to the authorship of any of the writing can be made.

2. While not conclusive due to the quality of the writing appearing on Items Q-1 and Q-2, a comparison of Items Q-1 and Q-2 to the writing and signatures appearing on Items K-1 revealed that they were generally significantly different and that common authorship was not indicated.

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3. It should be noted that date, payee and amount portions on Item Q-1 are type written and no findings are to the origin or identification of this particular machine could be made with the available material.

IV. REMARKS

Specific reasons for the opinions epxressed will not be listed at this time, but will be presented and demonstrated should this matter be brought to trial.

This examination has been conducted without prejudice, bias or influence of any person and the opinions expressed are those of of the undersigned and are based upon the material submitted.

Respectfully submitted,

[redacted]

Questioned Document Examiner

PJB
1/13/90

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,	)	CASE NO. CR89-0-63
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION IN LIMINE
	)	
LAWRENCE E. KING, JR. and ALICE PLOCHE KING,	)	
	)	
Defendants.	)	

COMES NOW the Defendant, Lawrence E. King, Jr., and hereby moves for an Order of this Court prohibiting the government from attempting to adduce evidence relating to any allegations of child abuse or homosexual relationships or activities of the Defendant. The Defendant further moves for an Order prohibiting the government from referring to such allegations during jury selection, its opening statement, trial, its closing statement, or at any other time during this proceeding. In support of this Motion, the Defendant offers its supporting Brief which is delivered to the Court contemporaneous with the filing of this Motion.

The Defendant requests an evidentiary hearing on this Motion.

Dated this 20 day of February, 1990.

LAWRENCE E. KING, JR., Plaintiff

By: Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served upon Thomas D. Thalken, First

Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Jerold V. Fennell, Suite 225 Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114, by depositing in the U.S. Mail, postage prepaid, on this 20 day of February, 1990.

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,	)	CASE NO. CR89-0-63
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LAWRENCE E. KING, JR. and ALICE PLOCHE KING,	)	
	)	
Defendants.	)	

BRIEF IN SUPPORT OF MOTION IN LIMINE

Respectfully submitted,

LAWRENCE E. KING, JR., Plaintiff

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147A-571-675

Facts

The Defendant Lawrence E. King, Jr. is charged in a 40 count Indictment with various crimes of embezzlement, conspiracy and other economic crimes. The Defendant is not charged with child abuse, any crime relating to homosexual activity, or the transportation of minors for the purpose of any kind of sexual activity. As this Court has observed in a recent Order denying the co-defendant Alice Ploche King's access to the tapes made by the investigator for the state legislative committee,

> Put simply, the pending case is based upon an indictment alleging economic crimes, essentially arising out of alleged misappropriations of money from the Franklin Community Credit Union. The State Legislative Committee which took the statements, appears, from the context of the statements, to be interested in matters not directly related to the allegations of the indictment presently pending in this court against Mrs. King.

Memorandum and Order, Feb. 2, 1990 at 2. In denying access to the tapes, this Court credited a statement of the government that "[t]he information does not directly relate to the expenditure of funds of Franklin Community Federal Credit Union (FCFCU) and the embezzlement of the FCFCU funds...." Id. at 3, quoting Memorandum in Opposition to Defendant Alice King's Motion for Inspection, at 3-4.

The government has been given access to the tapes. This court has now held that they are not even discoverably relevant to the defense of the current Indictment.

The Indictment in this case does make a thinly veiled reference to homosexual activity on the part of the Defendant Lawrence E. King, Jr. The Indictment alleges:

> From time to time during the conspiracy, King would use FCFCU funds for expenses of some of his male friends, including but not limited to, automobile leases, apartment rentals,

> clothing, jewelry, furniture and travel expenses. On occasion, King would also provide these friends with cash or credits at FCFCU.[1] Indictment at 8.

The First Assistant United States Attorney has represented to the Defendant's court-appointed counsel that he intends to adduce evidence from "six to ten" former homosexual lovers of the Defendant King about their relationships with the Defendant and about money which was, the government alleges, "lavished" on them. Presumably, the Government contends this evidence is relevant to show that Mr. King diverted monies from the Franklin Community Federal Credit Union (FCFCU) and spent the money on his homosexual lovers.

---

[1] We observe that this allegation was quite prominently reported in the local news media immediately following the public disclosure of the indictment. This circumstance is relevant with respect to other motions of the defendant, particularly the defendant's motion to change venue.

ARGUMENT

Threshold Analysis

Evidence is relevant under the Federal Rules of Evidence if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Relevant evidence is admissible "except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Fed. R. Evid. 402.

Rule 404(b) specifies that evidence of "bad acts" or "other crimes" is not admissible "to prove the character of a person in order to show that he acted in conformity therewith." Under Rule 404(b), evidence is not admissible to prove that the defendant has a general predisposition to commit crimes.

The standard in the Eighth Circuit for admission of other wrongs or acts evidence is set forth in United States v. Gustafson, 728 F.2d. 1078 at 1083 (8th Cir. 1984), as follows:

(1) a material issue on which other crimes evidence may be admissible has been raised;

(2) the proffered evidence is relevant to that issue; and,

(3) the evidence of the other crimes is clear and convincing.

To be sure, evidence of other wrongs or bad acts may be admissible on such issues as intent, knowledge, or plan. Fed. R. Evid. 404(b). However, to be admissible on such issues, the other crimes evidence must relate to wrongdoing similar in kind and reasonably close in time to the charge at trial. Id.

Rule 403

Even if the testimony meets the threshold relevance requirement, it is still inadmissible if its probative value is outweighed by the danger of unfair prejudice under Fed. R. Evid. 403. "Unfair prejudice" has been defined as:

> Whenever the admission of a particular class of relevant evidential facts would
>
> (1) be likely to stimulate an excessive emotion or to awake a fixed prejudice as to a particular subject or person involved in the issues,
>
> (2) and thus dominate the mind of the tribunal and prevent a rational determination of the truth,
>
> (3) and where the evidence having this tendency is not necessary to the ascertainment of the truth.

Wigmore, Code of Evidence, 3d. Ed. at 355 (1942).

In United States v. Bledsoe, 531 F.2d 886 (8th Cir. 1976), the court reversed a conviction of knowingly signing a false statement in connection with the acquisition of a firearm. In reversing, the court held that defendant was denied his right to a fair trial by prejudicial error in the admission of evidence of a multipage criminal transcript containing certain personal information, including the fact that he smoked, drank, and was born out of wedlock. The transcript also showed that Bledsoe had been convicted of two felonies, grand larceny and burglary. Excepting the burglary conviction, the court found that there was no probative value in the transcript and cited United States v. Clemmons, 503 F.2d 486 at 489 (8th Cir. 1974), which states:

> Such evidence tends to draw the attention of the jury away from a consideration of the real issues at trial, to fasten it upon other questions, and to lead them unconsciously to render their verdicts in accordance with their views on false issues rather than on the true issues on trial.

The court held that the evidence was irrelevant and unnecessary; not part and parcel of the crime charged. Id. at 891.

Rule 403 is a rule of exclusion. "The prejudicial impact of evidence is measured according to the extent to which the jury

might consider the evidence for purposes other than that for which it was intended." United States v. Medina, 755 F.2d. 269 at 1274 (7th Cir. 1985). "It is only when the probative value of the evidence is substantially outweighed by the likelihood that the evidence will induce the jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented on the crime charged, that Rule 403 requires its exclusion." Id.

Admissibility of Extrinsic Offenses - Child Abuse

Evidence that is not part of the crime charged in the indictment but pertains to the chain of events is admissible as an extrinsic offense "if linked in time and circumstance with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." United States v. Williford, 764 F.2d. 1493 at 1499 (11th Cir. 1985). The court stated that while not all bad acts occurring in the time frame of a conspiracy are automatically admissible, the fact that the acts are intertwined weights heavily toward admissibility. Id.

The test for admissibility is whether the extrinsic act is relevant to an issue other than defendant's character and whether its probative value is outweighed by its prejudicial effect. Id. at 1497. In Williford, the court held that it is not necessary that the charged offense and the extrinsic offense be similar, and a lack of similarity is merely to be considered in determining the probative value of the evidence in a Rule 403 analysis. Id. at 1500.

In United States v. Zabaneh, 837 F.2d. 1249 (5th Cir. 1988), the court applied the **Beechum-Robinson** test. See, United States v. Robinson, 700 F.2d. 205 (5th Cir. 1983); United States v. Beechum, 582 F.2d. 898 (5th Cir. 1978). Under this test, the court must first determine if the extrinsic offense is relevant to an issue

other than the defendant's character. In doing so, the threshold question is whether the defendant committed the extrinsic offense and the government must offer proof. Id. 837 F.2d. at 1262. "The court need not be convinced beyond a reasonable doubt. . . the court [must] require the Government to come forward with clear and convincing proof. Rather, the standard for the admissibility of extrinsic offense evidence is that Rule of 104(b)." Id. at 1263. Rule 104(b) states that the court may admit evidence upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of a condition of fact.

Beechum requires that this relevancy determination be made out of the hearing of the jury; the court must also identify and weigh the potentially prejudicial effect of the proffered evidence. Robinson requires that the trial judge shall articulate these findings on the record. See, United States v. Fortenberry, 860 F.2d 628 (5th Cir. 1988).

Under no construction of the Federal Rules of Evidence can any evidence of child abuse be admissible. Evidence of child abuse does not relate to a similar crime or wrong. As the government has already represented to the Court: "The statements of the individuals in the videotapes relate to other allegations than those charged in the indictment against the defendant." Memorandum in Opposition to Defendant Alice King's Motion for Inspection, at 3-4. Nor could any child abuse evidence form an integral and natural part of any account of the crimes alleged in this indictment, which this Court has itself as essentially "economic crimes".

Moreover, such evidence would be independently excludable under Rule 403 because the inherent prejudice would clearly outweigh any probative value, even if acts of child abuse were provable and were proximate in time. Such evidence would, if probative of anything, tend to prove that the Defendant was a bad man. Coupled with the inflammatory and highly prejudicial

publicity which has already infected this proceeding, the admission of such evidence would be wholly inappropriate.

Homosexuality

In United States v. Gillespie, 852 F.2d 475 at 479 (9th Cir. 1988), the court held that "Evidence of homosexuality is extremely prejudicial" in a criminal prosecution. The District Court in Gillespie, supra, committed reversible error by admitting testimony from which the jury could infer that defendant had a homosexual relationship. The defendant was charged with causing the transportation of a person in interstate and foreign commerce for illegal purposes.

Introduction of evidence of homosexuality creates a "clear potential that the jury may have been unfairly influenced by whatever biases and stereotypes they might hold with regard to homosexuals." Cohn v. Papke, 655 F.2d 191 (9th Cir. 1981). In Cohn, the court found that the evidence of defendant's sexual experiences took the focus of the jury away from "what happened" and puts it in on the character of the individual. The introduction of evidence of Cohn's sexual past and preferences was extremely prejudicial to his chances of receiving a fair trial.

In United States v. Wright, 489 F.2d 1181 at 1186 (D.C. Cir. 1973) the court held: "Evidence of homosexuality has an enormous proclivity for humiliation and degradation of a participant in a fashion completely unrelated to testimonial honesty. . .Unless and until the accused puts his character at issue by giving evidence of his good character or by taking the stand and raising an issue as to his credibility, the prosecutor is forbidden to introduce evidence of the bad character of the accused simply to prove that he is a bad man likely to engage in criminal conduct."

Acts of homosexuality would constitute inappropriate and inadmissible evidence. Homosexual acts are not even bad acts, other wrongs or other crimes. This evidence is not necessary to

this proceeding, and would inflame and prejudice the jury against the Defendant even more than he is already prejudiced; the probative value of the evidence would be minimal. Such character evidence is inadmissible.

Conclusion

Allegations against the defendant regarding homosexuality and child abuse are highly prejudicial in the context of the charges in the indictment. Any evidence relating to child abuse and homosexuality issues could be "relevant" under Rule 401 where the prosecutor could link this conduct to spending. Under Rule 404(b), however, homosexuality goes to the defendant's character and is inadmissible. The child abuse allegations, on the other hand, go to "other crimes, wrongs and acts". In a Rule 403 balance it is clear that such evidence would grossly and unfairly prejudice the conduct of this proceeding, which is essentially an embezzlement trial.

LAWRENCE E. KING, JR., Plaintiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Brief in Support of Motion in Limine was served upon Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Jerold V. Fennell, Suite 225 Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114, by depositing in the U.S. Mail, postage prepaid, on this 20 day of February, 1990.

Steve Achelpohl

Steven E. Achelpohl
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IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,	)	CASE NO. CR89-0-63
Plaintiff,	)	
vs.	)	MOTION FOR CHANGE OF VENUE
LAWRENCE E. KING, JR. and ALICE PLOCHE KING,	)	
Defendants.	)	

COMES NOW the Defendant, Lawrence E. King, Jr. and, pursuant to the Fifth and Sixth Amendments of the Constitution and Rule 21 of the Federal Rules Criminal Procedure, hereby moves for an Order of this Court changing the venue of this matter for purposes of trial, and transferring this case to another district.

The Defendant respectfully requests an evidentiary hearing on this Motion.

Dated this 20 day of February, 1990.

LAWRENCE E. KING, JR., Plaintiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Change of Venue was served upon Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Jerold V. Fennell, Suite 225 Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114, by depositing in the U.S. Mail, postage prepaid, on this 20 day of February, 1990.

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474-571-416

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	CASE NO. CR89-0-63

BRIEF IN SUPPORT OF MOTION FOR CHANGE OF VENUE

Respectfully submitted,

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FACTS

At the risk of using a concededly overworked phrase, this is a special case. The pretrial publicity in this case has been massive, inflammatory and prejudicial. Public access to the rumor and innuendo engendered by the various investigations has not been limited to the news media. In one episode, an aspiring candidate for the state legislature mass mailed a "memo", prepared by a former state senator, outlining rumors concerning evidence developed by a state legislative committee. The congressional representative for this congressional district has also mailed material, prejudicial to the Defendant's case, to most if not all of the residents of this district.[1] The stories of witnesses of the special legislative committee investigation, which the news media has generically dubbed the "Franklin investigation", are now front page news. The publicity has been, on occasion, outrageous, and the conduct of certain present and former public officials of questionable propriety.[2]

The prejudicial publicity has already infected the jury selection process. Jury veniremen who have been called for jury duty in this District have already discussed the prospect that they might be called to sit on one of the "King cases".

Beginning in November of 1988, upon the closing of the Franklin Community Federal Credit Union (FCFCU), daily and prominent publicity regarding the Defendants, particularly the Defendant Lawrence E. King, Jr., and the closing of the FCFCU, has appeared in newspapers and on radio and television. In addition to news reports of these events, the broadcast and print media

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[1]We do not suggest that the congressman's actions remotely approach the culpability of the other mailing described above.

[2]Public remarks have been made by members of the Bar of this Court. They are subject to the legal and ethical rules concerning the pretrial public dissemination of information about criminal cases embodied in the Nebraska Code of Professional Responsibility and the Local Rules of this Court. See Local Rule 39A; DR 7-107 of the Code of Professional Responsibility.

prominently publicized a Congressional investigation and hearings in Omaha regarding the closing of FCFCU.

News stories have reported much more than the simple allegations contained in the Indictment. A special state legislative committee held hearings regarding allegations of child abuse, drug abuse and other alleged criminal acts of the Defendant Lawrence E. King, Jr. and others. Although a state grand jury has been ordered and a special prosecutor appointed, no charges have resulted from these state proceedings. However, extensive and inflammatory publicity has been generated, graphically detailing the sensational subject matter of the investigation, and an alleged cover-up by the local law enforcement authorities. The investigation has been plagued by leaks from persons involved in the investigation, which have saturated the state with rumors and innuendo and which have prejudiced the the defendant's ability to receive a fair trial in this case.

The Omaha World Herald newspaper, with a daily circulation of 139,094 (166,327 Sunday) in the Omaha metropolitan area and 196,375 (251,438 Sunday) in the State of Nebraska, has published 394 articles focusing on the Defendants and FCFCU in 294 days between November 1, 1988 and August 21, 1989. Between the dates of January 1, 1988, and January 7, 1990, 481 articles were published by this newspaper. The Omaha World Herald has a state-wide circulation.

Massive publicity has also occurred in the broadcast media and the coverage has been as extensive, inflammatory and prejudicial as it has been in the print media. One Omaha television station, KMTV, has initiated within the last month a regular weekly news program, titled "The Franklin File", which is apparently designed to report on the developments in this case as well as the state legislative investigation and related grand jury investigation.[3] A local Omaha radio station, KKAR, has run nearly daily reports on the "Franklin investigation", most prominently on a morning talk

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[3]This is unprecedented to the memory of court appointed counsel.

show hosted by radio personality Steve Brown.

Prominent and widely respected national political figures have fueled the inflammatory publicity. Their public remarks have not been limited to the facts of the investigation. Repeated public comments have been made by elected public officials professing the guilt or culpability of the Defendant King. A United States congressman from this congressional district publicly stated that the Kings will never go to trial; they will plead guilty because the evidence is so overwhelming against them. The same congressman transmitted a mailing to citizens in the district extolling the virtues of a congressional investigation of the failure of the FCFCU, stating in headlines: "Congressman Enraged by Franklin Defendants Misleading Nuns." The mailing described the alleged diversion as follows:

> of the $42,409,389 that was deposited into the credit union from 1987 until the credit union was closed down in 1988, $10,113,217 was diverted to the King family for personal use. $1,901,653 was spent on businesses operated by Mr. King. These uses amounted to 28.6% of the total amount of funds taken into Franklin.

And on October 24, 1989, he authored another mass mailing to his constituents, describing the Savings and Loan bill passed by Congress, and declaring: "[t]he bill contains provisions passed in response to the Franklin Credit Union failure designed to insure that such massive fraud does not happen again."

The publicity has concerned not only stories relating to the alleged diversion of funds from the FCFCU, but more recently, prejudicial and inflammatory coverage relating to child abuse allegations including sexual abuse, police cover-ups, drug abuse and other allegations. The media has identified the investigation as the "Franklin investigation", which we submit, has inextricably tied the public's perception of the instant case to the state legislative, and now, special grand jury investigation. The state grand jury is identified as the "Franklin grand jury". This publicity has been spawned by massive leaks coming out of the

legislative committee investigating the matter, and has been fueled by the statements of prominent local political figures including state senators, candidates for political office, and others.

Again, unfortunately, public disclosure has not been limited to the news media. A memorandum, widely known as the "DeCamp Memo," was authored by a former, highly visible state senator. In an action which can most charitably be described as reckless and irresponsible, this memo was distributed by an aspiring political candidate to approximately 10,000 residents in West Omaha.[4] This memorandum stated, among other things, the following:

> A reporter has to be deaf, dumb, blind and corrupt not to know the names of the personalities involved and the scope of the allegations. Stop on any street corner in Omaha; go into any coffee shop; have a drink in any bar in Omaha, or if you are lazy, walk around the Capitol Rotunda in Lincoln and simply listen to the discussions. Here is what you will learn:
>
> 1. The allegations are that the most powerful and rich public personalities of the state are central figures in the investigation.
>
> 2. That these include . . . Larry King[5] of the dead Franklin Credit Union . . .
>
> 3. That the allegations are that these individuals were some of the centerpieces in a coordinated program of Child Abuse,

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[4] The memo was circulated on or about January 25, 1990. The person responsible for distributing the memo stated in a transmittal letter: "You can be assured that as your State Senator the people of this District 4 will always be informed regardless of the consequences to myself."

[5]The DeCamp Memo is the only document, known by court-appointed counsel to be publicly disseminated, which has identified any person other than the Defendant King as being connected with the criminal allegations of the legislative committee. The restraint exercised by the print and broadcast media in not identifying others connected to allegations of criminal wrongdoing has not, however, been practiced with respect to Mr. King.

Drug Abuse, and abuse of their various public positions of trust and honor.

4. That prosecutors who should be prosecuting are afraid to prosecute for one reason or another and that the public itself is rapidly losing faith in its fundamental institutions of government as a result of this perceived coverup, whether real or imagined.

. . . . . .

What do I personally believe. I damned well believe the allegations.

Now, having said these things and reported these allegations, am I afraid of being sued by these powerful personalities. ABSOLUTELY NOT. Remember that rule you newspaper folk live and die by and crucify others by. If you have forgotten, let me repeat it for you: TRUTH IS A DEFENSE. And, since these are all PUBLIC FIGURES, we also knew that ABSENT ANY MALICE, and I have none, TRUTH IS DEFINITELY A DEFENSE.[6]

In the wake of his resignation from the Franklin legislative committee, on July 13, 1989, a prominent member of the legislature was quoted on the front page of the Omaha World Herald as stating: ". . . the alleged abuse relates not just to former Franklin treasurer and manager Lawrence E. King, Jr., but others." The senator chastised other members of the committee, stating that witnesses and lie detector tests have documented some of the other cases of abuse.

Other publicity has focused on lost files of foster children and the alleged deaths of children. One state senator described, on December 28, 1988, an alleged incident at a party involving possible sexual abuse of a teen-age girl which he said could be

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[6]The only apparent redeeming feature of this memo is that it accurately reports the extent of the rumor and innuendo which has saturated this community concerning what the public incorrectly perceives to be essentially one investigation, the Franklin investigation.

likened to a "slave auction", except the allegations were even more reprehensible than slave auctions.

When the Indictment in this case was made public, the news media embellished the allegations of the Indictment with stories on such inflammatory matters as the alleged lack of a substantial estate or trust fund for the benefit of Mrs. King; that Mrs. King's mother suffered a mental breakdown shortly after the death of her father in 1953, that Mrs. King's relatives had not provided the Kings with any money as had been claimed by the Kings, and that former associates of Mr. King saw large amounts of cash in Mr. King's briefcase during trips to Jamaica.

The publicity is further illustrated by headlines which include: "Ex-CIA Leader Might Direct Franklin Probe", "Hoagland say, 'Find Larry and Arrest Him'", "Nuns Confirm Cash Missing at Franklin", "Credit Union Records Appear to be Forged", "Watching Larry Living Well", and "Woman Says Teens Told Her of Abuse", "Funds Paid for Chandelier, Ostrich Coat", "Fired Teller Says He Tried to Blow Whistle," "Schmit 'Intimidated' After Call", and "Hoagland: Hearing Sheds Light on Fraud."

The articles appearing in newspapers have focused on the defendant's lifestyle, alleged child abuse, Congressional and state legislative probes, alleged law enforcement cover-ups, and suspicion that a recently ordered mental evaluation for the Defendant is a delay tactic. This order was greeted with a barrage of publicity questioning the court's motives and defense counsel's motive. As in the case most of the pretrial publicity, at least one prominent political figure publicly remarked about the "suspicious" circumstances surrounding this action.

In a recent order denying Mrs. King access to certain tapes of witnesses before the legislative committee, this Court stated:

> Counsel for the government and counsel for Mrs. King are to be complimented for their professional handling of this issue, unlike others who are not presently before the court. As counsel alluded to during oral argument, these tapes have been the subject of wild public speculation. It is shameful and

> unethical to play games with the information contained in the tapes, such as, by leaking to the public supposedly accurate bits and pieces of information said to be contained in the tapes. The witnesses who gave the statements, the persons who may be accused in the statements, and the public deserve a calm, dispassionate, and private examination of the facts by competent public investigators and by competent public prosecutors before someone is accused, let alone tried. There is every reason to trust the integrity and competence of law enforcement, including the Federal Bureau of Investigation, the United States Attorney's Office for the District of Nebraska, the Nebraska State Patrol, and the Nebraska Attorney General's Office. Likewise, there is every reason to trust the competence and integrity of defense counsel. In contrast, there is no reason to trust those who frustrate the legal process by making outrageous, unsupported, and insupportable claims to the public before the legal process has had a chance to work. Those who care about justice would be well advised to follow the lead of counsel for the government and counsel for the defendant in this case by allowing the deliberative legal process to work free of sensationalized rumor and innuendo.

Memorandum and Order of February 2, 1990, Filing No. 161. As the Court is aware, the publicity is continuing unabated.

We respectfully submit that it is impossible for this case to be tried in the "calm", "dispassionate" and "deliberative" atmosphere described by the Court.

ARGUMENT

The Defendant is constitutionally entitled to a trial by a fair and impartial jury under the Fifth and Sixth Amendments to the United States Constitution. "Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper." Bridges v. California, 314 U.S. 252 at 271, 62 S.Ct. 190, 86 L.Ed.2d 142 (1941). As the United States Supreme Court said in Sheppard v. Maxwell, 384 U.S. 333, 362-363, 86 S.Ct. 1507, 16 L.Ed2d 600 (1966):

> Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make independent evaluation of the circumstances. Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.

In Sheppard, the Supreme Court entered an order granting a writ of habeas corpus because of the circus-like publicity and circumstances which surrounded the historic trial of Dr. Sam Sheppard.

An accused's right to a trial by a fair and impartial jury is also embodied in the protection of Rule 21 of the Federal Rules of Criminal Procedure, which provides as follows:

> 21. Transfer from the District for trial.
>
> (a) **For prejudice in the district the Court.** The Court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that

> there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district.

The rule thus authorizes the court to transfer a criminal trial to a different district upon a motion by the defendant, provided he can show that prejudice exists against him to the extent that a fair and impartial trial cannot be had in the district where the indictment was returned against him.

A more stringent standard governs consideration of a motion for change of venue under Rule 21(a), than under the Fifth and Sixth Amendments. Judicial evaluation under Rule 21(a) is based on the exercise of the court's supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts, not as a matter of constitutional compulsion. See Murphy v. Florida, 421 U.S. 794, 797, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975). See also, Murphy, Id. at 803-04 (Burger, C.J., concurring) ("Although I would not hesitate to reverse petitioner's conviction in the exercise of our supervisory powers, were this a federal case, I agree with the Court that the circumstances of petitioner's trial did not rise to the level of a violation of the Due Process Clause . . .): Cf. Rideau v. Louisiana, 373 U.S. 723, 728, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) (Clark, J., dissenting) ("It goes without saying, however, that there is a very significant difference between matters within the scope of our supervisory power and matters which reach the level of constitutional dimension."); United States v. Provenzano, 620 F.2d 985, 995-96 (3d Cir. 1980), cert. denied, 449 U.S. 877 (1980). Under this more protective standard, jurors' assurances that they will maintain impartiality in the face of massive news coverage do not, in and of themselves, resolve a motion for change of venue grounded in prejudicial pretrial publicity. Murphy, supra, 421 U.S. at 797. Rule 21(a) does not provide clear direction for evaluating prejudice in a federal prosecution. However, the Rule

has been interpreted to require a presumption of prejudice in cases where "the totality of circumstances [indicates] that petitioner's trial was not fundamentally fair." Id. at 799. Cf. Marshall v. United States, 360 U.S. 310, 311-12, 79 S.Ct. 1171, 3 L.Ed.2d 1250 (1959) (using its supervisory power to grant a new trial where jurors were exposed to news articles containing information previously ruled prejudicial and inadmissible). While evaluation of juror prejudice from voir dire examination is one factor to consider, voir dire evidence of impartiality is not a sufficient guarantee of a fair trial where heightened emotions related to the crime pervade the general community. Murphy, 421 U.S. at 799.

Other factors will require a transfer prior to trial without attempting to select an impartial jury in the District. A pretrial venue change will be required where the pretrial publicity in a community is so extensive and inflammatory as to raise a presumption that an impartial jury could not be seated there. United States v. Bliss, 735 F.2d 294, 298 (8th Cir. 1984). As the Supreme Court recognized in Beck v. Washington, 369 U.S. 541, 557, 82 S.Ct. 995, 8 L.Ed. 2d 98, (1961) reh'g denied, 370 U.S. 965 (1962), the question is whether:

> pretrial publicity was so intensive and extensive . . . that a court could not believe the answers of the jurors [regarding their impartiality] and would be compelled to find bias or preformed opinion as a matter of law.

The factors to be considered include the extent of circulation of publicity concerning the event in the community, the severity and sensationalism of the offense, the familiarity of the jurors with the individuals involved, the length of time between the publicity and the trial, the prospective jurors' exposure to the publicity, the connection of government officials with the release of the publicity, and the character and size of the district from which jurors will be selected. United States v. Faul, 748 F.2d 1204, 1225, (8th Cir. 1984) cert. denied 472 U.S. 1027 (1985) (Lay, Chief Judge, dissenting).

Thus, in United States v. Engleman, 489 F. Supp. 48 (E.D. Mo. 1980), the court granted a motion for change of venue prior to trial where inflammatory publicity shortly before trial created an atmosphere of pervasive public prejudice, making a fair trial within the district impossible. Acknowledging the line of cases in the Eighth Circuit reflecting a preference that motions for transfer await voir dire,[7] the court nonetheless ordered the case transferred, reasoning as follows:

> Effective and economic judicial administration is not well served by calling an inordinate and unwieldy number of veniremen to see if an unbiased jury might be obtained, especially when it is already apparent that a substantial chance of intolerable prejudice exists. (Citation omitted). Engleman, 489 F. Supp. at 50.

The court noted that, though determination of impermissible prejudice could be made during voir dire, "each case must turn on its own facts", and in some cases, "massive publicity may diminish the efficacy of voir dire in screening prospective jurors." Id. at 50. As in this case, Engleman involved saturation coverage of the case by the St. Louis media leading the Court to conclude that, "[i]t is doubtful that any literate veniremen [in the St. Louis area] are not aware of this case." Id., 489 F. Supp. at 49[8].

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[7]See, e.g., United States v. Brown, 540 F.2d 364, 377 (8th Cir. 1976). More recently, this Circuit has expressed this preference in United States v. Bliss, 735 F.2d 294, 297 (8th Cir. 1984).

[8]The court also noted that the logistics of trying the case were too great to wait until the eve of trial before reaching a decision on where the trial would be held. Hotel accommodations, transportation, and other expenses for jurors, witnesses, attorneys and staff, obtaining a suitable court facility were several considerations which the court cited as relevant to its determination. Engleman, 489 F. Supp at 50. Moreover, like this case, the publicity was not abating in Engleman, and the court was most reluctant to impose first amendment restrictions on the media in a matter engendering such intense public concern. Id. at 51.

The government and defense counsel have estimated that trial may take as long as 6 months. The pool of jurors will be

We have no quarrel with the right and need for the press to report in detail on a matter of public importance such as this trial. The courts have been unwilling to place direct restrictions on the press, because of many reasons including that the "press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism." Sheppard v. Maxwell, 384 U.S. at 350. But the public debate must not be permitted to divert the trial from the "very purpose of a court system . . . to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures." Cox v. Louisiana, 379 U.S. 559, 583, 85 S.Ct. 476, 13 L.Ed. 2d 487 (1965).

We are also cognizant that this Circuit has expressed a strong preference that pretrial venue changes are to be reviewed with great scrutiny. Likewise, our Circuit has been reluctant to grant venue changes unless the Defendant meets the heavy burden of showing that the press coverage was so inflammatory that the Defendant, with reasonable probability, will not receive a fair trial. More than a "reasonable probability" is factually present this case as distinguished from the facts of other Eighth Circuit cases.

Thus, in United States v. Bliss, 735 F.2d 294 (8th Cir. 1984), the defendant was convicted of filing false income tax returns when he overstated expenditures generated by bogus transactions with three other individuals. Bliss sought reversal on grounds that the district court erred in refusing a change of venue. Bliss contended that intensive and inflammatory pretrial publicity regarding a dioxin spraying incident made it impossible to impanel

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necessarily large in order to find those who can serve for such a lengthy period. Thus the difficulty of finding impartial jurors who can also serve for a number of months will increase. Further, any jury seated in the State of Nebraska must be sequestered because of the massive and aggressive reporting of this case by the media.

a fair and impartial jury. The lower court denied the motion and the circuit court affirmed.

While the Bliss case establishes that massive pretrial publicity will not alone mandate a change of venue, which we do not dispute, its circumstances are distinguishable from this case. Most of the publicity occurred four months prior to trial, and after that time Bliss' role in the reports was only "peripheral". Bliss produced 350 pages of publicity materials, however, the court said the publicity was "straight forward, factual and objective" and not "tending to arouse lingering ill-will or vindictiveness in the local community." Id. at 299. In this case, the Defendant has been subjected to massive and constant publicity regarding an unrelated matter, viz. the state legislative investigation relating to child abuse, which has been euphemistically dubbed the "Franklin Investigation" and which is discussed in detail above. Moreover, the Bliss case did not involve the public pronouncements of the defendant's culpability by prominent and widely respected public officials.

The court in United States v. Harvey, 756 F.2d 636 (8th Cir. 1985), cert. denied, 474 U.S. 831 (1985), placed emphasis on the reaction of the jury panel to pretrial publicity. Of forty-four members of the panel, only nineteen indicated they had been exposed to pretrial publicity involving the case. Only one responded that pretrial publicity had prejudiced him. Moreover, the Court turned its decision on its finding that the Court did not "abuse its discretion" in denying the Defendant's motion for change of venue.[9] Many of the factors present here were not present in the Harvey case.

Media coverage was widespread in United States v. Faul, 748

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[9]We observe that in all of the appellate cases, the circuit court is bound by its standard of review, specifically, the abuse of discretion standard. Because the government rarely if ever appeals an order granting a change of venue, we respectfully suggest that the appellate cases constitute an unrepresentative sample of the kind of cases that warrant change of venue.

F.2d 1204 (8th Cir. 1984), in which the defendants were convicted of second-degree murder, assaulting United States Marshals and other law enforcement officers, and harboring and concealing a fugitive. However, only sixty-eight news reports appeared before trial. And the evidence showed that the stories were "largely factual in nature." Id. at 1212. There was apparently no irrelevant subject matter involving the defendants in Faul which had captured the interest of the media like the legislative committee investigation has in this case. The court relied on a proposition which we do not dispute, that "unless pretrial publicity is pervasive and prejudicial, it will not, in and of itself, be grounds for a change of venue." Id. The Court also reviewed the order of the district court on the basis of the abuse of discretion standard.

Both Bliss and Harvey follow the precedent in United States v. Brown, 540 F.2d 364 (8th Cir. 1976) which sets forth the "ultimate test" to determine whether a juror has been affected adversely by pretrial publicity, and therefore whether a transfer of venue may be granted. Brown, a Building Commissioner, was convicted of interference with interstate commerce by extortion in violation of 18 U.S.C. §1951 and mail fraud in violation of 18 U.S.C. §1341. The extent and nature of pretrial publicity is not of record but is described as "an intense investigative effort by the St. Louis Press". Id. at 378. The motion for change of venue due to pretrial publicity was denied pending voir dire. Brown contended voir dire was insufficient. Of the panel questioned, only seventeen of the forty-four members had been exposed to the publicity and all seventeen said they would find no difficulty in rendering a fair and impartial decision.

A Nebraska Supreme Court case identifies the factors to be evaluated whether change of venue is necessary because of adverse pretrial publicity. State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987). Jacobs was found guilty of second-degree arson and criminal mischief. Members of the small community of St. Paul, Nebraska were exposed to many reports of the incident and the court

excused forty percent (40%) of the venire persons, but the motion for change of venue was not granted. The court lists the factors to be evaluated are: 1) nature of publicity; 2) degree to which the publicity has circulated in the community; 3) degree to which publicity has circulated to areas which venue could be changed; 4) length of time between dissemination and trial date; 5) care exercised in jury selection; 6) number of challenges exercised during voir dire; 7) severity of offense; and 8) site of the area which venue is drawn. Id. at 473.

We do not dispute that voir dire may uncover prejudice of potential jurors. However, the absence of answers admitting prejudice/prejudgment cannot be equated with the absence of prejudice. Prejudice cannot always be identified by merely interrogating jurors, particularly in a case which involves these kind of sensitive issues, as well as the existence of an unrelated but massively publicized investigation raising the sensational issues identified by the legislative committee. Cf. Rideau v. Louisiana, 373 U.S. 723 (1961); United States v. Davis, 583 F.2d 190, 197 (8th Cir. 1978); United States v. Bear Runner, 502 F.2d 908 (8th Cir. 1974); American Bar Ass'n Project Minimum Standards for Criminal Justice, Standards Relating to Fair Trial and Free Press, §3.2, Commentary at 121-28 (Approved Draft 1968).

This case involves allegations that Lawrence King stole some 10 million dollars from a federal credit union. The Defendant King was a prominent, and perhaps flamboyant, member of the community. He was politically well-connected to the Republican party. Larry King was a prominent black Republican. The government will seek to evidence that the embezzled funds were spent on charter air travel, furs, jewelry, fancy parties, etc. And the Government has alleged -- and will attempt to prove -- that the Defendant lavished expensive gifts on his male friends, a veiled reference to what the government claims were King's homosexual lovers. This case also raises the specter that some of the matters developed by the state legislative committee may become the subject of attempts to evidence such matters by the government. The trial of this case

will entail political, racial and sexual overtones, in addition to the massive embezzlement which is alleged. The prejudicial effect of pretrial publicity regarding alleged sexual child abuse must be carefully considered when it is probable that the government will attempt to introduce evidence relating to homosexual activities. This case involves, in summary, sensitive issues that would make voir dire in any community extraordinarily difficult.

Unless this Court transfers this case, however, voir dire will occur in the community where the rumor and innuendo have been spread for over a year. Substantial and prejudicially inflammatory publicity preceded the Indictment in this case, following in the wake of the closing of the FCFCU. Civil litigation was initiated by the National Credit Union Administration which was widely reported both in the news media, both print and broadcast media. The press frolicked with the daily deluge of disclosures about the flamboyant lifestyle of the Defendant and the alleged disappearance of nearly forty million dollars. The fascination of the news media quickly turned to the even more sensational allegations of sex abuse, child abuse, drug abuse, cover-ups, rumors of involvement of prominent citizens and other controversial innuendo coming from leaks in the state legislative committee. Recently, when the competency of the Defendant was brought into question, the press and various public officials questioned the motivations of defense counsel and the court about what was going on. The avalanche of pretrial publicity has continued unabated for one and one-half years. There is no reason to believe that it will stop until this case has been tried.

Many articles in the media have resulted from "investigative reporting". The prejudicial effect of these articles is very high because "witnesses testimony" is reported in the media prior to trial. For instance, the Omaha World Herald interviewed a number of persons regarding the count in the indictment relating to Mrs. King's inheritance. The quoted witnesses had no knowledge of the inheritance.

Tenacious sides have been taken on the issues raised in this

case and as the result of matters growing out of the state legislative committee. Tenacious sides have also been drawn by the many public personalities who have injected themselves into the matter. Widely respected and elected public officials have become partisans in the public debate, openly expressing their opinions about the Defendant's culpability.

Public and extrajudicial statements have been made by many persons, including members of the Bar of this Court, prejudicial to the Defendant King. Local Rule 39 prohibits the making of an extra-judicial statement that a lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. An extra-judicial statement, is said by the local rule to be "likely to have such an effect" when it relates to a criminal matter and expresses the following matters:

> 1. The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
>
> 2. In a criminal case . . . the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
>
> 3. . . .
>
> 4. Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or
>
> 5. Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

Extra-judicial statements falling into all of these categories have been made concerning the Defendant King and this case.

Everyone is entitled to their opinion of Larry King's guilt or

innocence. We do not dispute the right of anyone to express their opinion, subject to the professional duties of lawyers. This Court cannot and should not prevent, or attempt to prevent, the expression of opinion about this case. However, the Defendant King is entitled to a fair and impartial jury trial. This Court can and must ensure that Larry King receives a fair trial.

For these reasons, we request that the Defendant's Motion for Change of Venue be granted.

LAWRENCE E. KING, JR., Plaintiff

By: Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000
His attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Brief in Support of Motion For Change of Venue was served upon Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101, by depositing in the U.S. Mail, postage prepaid, on this 20 day of February, 1990.

Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CR 89-0-153
	)	
Plaintiff,	)	
	)	
- vs -	)	MOTION TO DISMISS INDICTMENT
	)	
KAREN LLOYD,	)	
	)	
Defendant.	)	

COMES NOW the Defendant, by and through her attorney, and moves that the indictment be dismissed pursuant to Federal Rules Criminal Procedure 12(b) on the following grounds:

1. That the Defendant was charged under 18 U.S.C. Section 1344 which states in relevant part:

> "Whoever knowingly executes, or attempts to execute, a scheme or artifice--- (1) to defraud a federally chartered or insured financial institution; or (2) to obtain any moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretense, representations, or promises, shall be fined no more than $10,000.00 or imprisoned not more than five years, or both."

2. That examination of the materials provided pursuant to Federal Rule of Criminal Procedure 16 does not reveal any facts which substantiate the above federal charge.

KAREN LLOYD, Defendant

By /s/
Deborah D. Cunningham - 15848
505 Elkwood Mall
42nd & Center Streets
Omaha, Nebraska 68105
(402) 342-5250

CERTFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was forwarded by United States Mail, postage prepaid, this 21 day of February, 1990, to Thomas Thalken, U.S. Attorney, Zorinsky Federal Building, Omaha, Nebraska. 68102.

Deborah D. Cunningham

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CR 89-0-153
	)	
Plaintiff,	)	
	)	
- vs -	)	
	)	
KAREN LLOYD,	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS INDICTMENT

This Motion is made pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure which states in relevant part:

> "Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:
> (1) Defenses and objections based on defects in the institution of the prosecution; or
> (2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);"

Federal Rules Criminal Procedure 12(b).

On November 2, 1987, a bank account was opened at Bell Federal Credit Union. The signature card for this account reads "Karen Lloyd for Kathleen D. Fowler." (copy attached). The government maintains that on or about December 23, 1988 Karen Lloyd, as a signatory on the account, withdrew approximately $900.00 from this account. The indictment alleges that Karen

Lloyd knowingly executed a scheme and artifice to obtain moneys from Bell Federal by fraudulent pretenses, representations and promises.

The legislative history of 18 U.S.C. 1344 clearly reflects that this statute was "designed to provide an effective vehicle for the prosecution of frauds in which the victims are financial insitutions that are federally created, controlled or insured.," S. Rep. No. 225, 98th Cong., 2nd Sess. 377 (1983) reprinted in 1984 U.S. Code. Cong. & Admin. News 3182, 3517 (1983) (emphasis added). The history goes on to point out that "[W]hile the basis for Federal jurisdiction in the existing general fraud statutes is the use of the mails or wire communications, in the proposed offense, jurisdiction is based on the fact that the victim of the offense is a federally controlled or insured institution defined as a 'federally chartered or insured financial insitution.'" S. Rep. No. 225, 98th Cong. & Admin. News 3182, 3519 (emphasis added).

The United States Court of Appeals for the Second Circuit in United States v. Blackmon 839 F.2nd 900, 902 (2nd Cir. 1988), reversed fifteen convictions of the defendants under 18 U.S.C. 1344. The reversal was based on the conclusion that the federally charted institution was not the victim in the defendants' scheme to defraud. In Blackmon, the defendants employed a scheme commonly known as the "pigeon drop." The crux of this defense is that the "pigeon" is ultimately convinced to withdraw cash from their own bank account in the hope (and greed) of gaining far more than he withdrew. The Second Circuit stated that:

> "It is true that the victims' money had at one time been 'under the custody or control' of federally insured banks. This however, proves too much. The property obtained by the defendants' scheme was the foreign currency purchased by the victims with money legally withdrawn from the banks. At the time the foreign currency was obtained, it simply was not in any way under the control or custody of

the banks. If the statute applied to these facts, it could apply to any situation where property purchased with money legally withdrawn from a federally insured bank was thereafter fraudulently obtained. The statute does not 'plainly' yield such an extraordinary result." (Court's emphasis).

United States v. Blackmon, 839 F.2d 900, 904 (2nd Cir. 1988) (emphasis added).

The Court further stated:

"Moreover, the withdrawals were not undertaken 'by means of false or fraudulent pretense, representations, or promises.' Thus, even if those legal withdrawals were imputed to the defendants, the imputed acts would not constitute conduct prescribed by law."

United States v. Blackmon, 839 F.2d 900, 905 (2nd Cir. 1988).

In its discussion of the legislative history of 18 U.S.C. 1344, the Second Circuit in Blackmon noted that it is "abundtly clear that Congress did not intend the bank fraud statute to cover ordinary state law offenses where, as here, the fraud victim was not a federally insured bank." United States v. Blackmon, 839 F.2d 900, 905 (2nd Cir. 1988).

The facts as disclosed by the indictment and Rule 16 materials show that the defendant was a signatory on the account at the federal institution that the indictment alleges she defrauded. Therefore, the withdrawal appears to be legal. The legislative history of 18 U.S.C. 1344 clearly shows that the basis for jurisdiction of Federal Courts rests upon the federally chartered or insured insitution being the victim of a scheme to defraud. Since the withdrawal was legal, just as in Blackmon, the institution was not defrauded. And for the same reasons, the indictment against the defendant should be dismissed.

Respectfully submitted,

Deborah D. Cunningham

CERTFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was forwarded by United States Mail, postage prepaid, this 26 day of February, 1990, to Thomas Thalken, U.S. Attorney, Zorinsky Federal Building, Omaha, Nebraska. 68102.

Deborah D. Cunningham

Name

SOUTH

APPLICATION FOR MEMBERSHIP

Account Number 11901 Name (To be filled in by credit union) Karen Lloyd for Kathleen D. Fowler

Complete Address 1113 S. 31st 68105

Husband's first or Wife's maiden name

Employer - Bus. Phone Home Phone

Dept. or Occupation Place of Birth Wakefield, NE

Date of Birth 9-7-47 Mother's maiden name

Membership Eligibility Soc. Sec. No. or Tax Ident. No. 503-62-5797

By signing on the reverse side, I hereby make application for membership in and agree to conform to the bylaws and any amendments thereof in the

X Kathleen D. Fowler CREDIT UNION

I also agree to the terms and conditions of any account that I have in the credit union now or in the future and agree that the credit union may change those terms and conditions from time to time.

This application approved by the: (Check one)

( ) Board ( ) Exec. Committee Date

( ) Membership Officer Signed

Reverse side must be completed (Person representing approval or disapproval)

INSURANCE BENEFICIARY DESIGNATION

If life savings insurance is carried in connection with this account, I, the account owner who is insured, hereby agree that any amount payable or anyone or added to this account by reason of such insurance shall be paid to

Name Edna Shuma Address 814 Dowling Blvd

if then living whom I hereby designate beneficiary of such insurance. I reserve the right to change or terminate the designation of beneficiary. I further agree that any designation or change of beneficiary, or termination of designation, shall be binding upon the credit union only if filed with the credit union prior to my death on a form supplied by the credit union. In the absence of the filing of such a designation, change or termination, I agree on behalf of myself and my heirs, assigns, personal representatives and all other persons claiming through me to indemnify and save the credit union harmless from all loss or damage by reason of the payment of the proceeds of such insurance to the beneficiary named above. I understand that the credit union has no obligation to continue to provide life savings insurance and that whenever the credit union does provide such insurance, it may, in its sole discretion, cancel the insurance at any time.

Account owner who is insured Kathleen D. Fowler Consent of spouse to be completed in community property states if designated beneficiary is someone other than spouse of insured)

Signature 11-3-87 19

Dated:

Insurance Carrier Approved and consented to:

Contract No. Signature of spouse

Form 150-123 Rev. 11/84 Printed in U.S.A. 811114

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	CASE NO. CR89-0-63 MOTION FOR EXTENSION OF DISCOVERY DEADLINE

Comes Now the Defendant, Lawrence E. King, Jr., and hereby moves for an Order extending discovery. In support of this Motion, the Defendant states to the Court as follows:

1. The Defendant is currently confined at the Springfield Medical Center, Springfield, Missouri, undergoing an evaluation under 18 U.S.C. §4241, et seq. to determine his mental competence to stand trial.

2. Under the current scheduling order of this Court, discovery shall be closed on March 1, 1990.

3. Because of his current confinement, and the location of his confinement, the Defendant cannot consult with counsel with respect to discovery matters including, without limitation, the reciprocal discovery obligations of the Defendant under Rule 16 of the Federal Rules of Criminal Procedure.

4. It is necessary and reasonable for the Court to extend discovery to accommodate the Defendant's circumstances, specifically, that he is unavailable to consult with counsel with respect to pending discovery, including the Defendant's own discovery obligations.

Wherefore, the Defendant respectfully requests an Order of this Court extending the discovery deadline to a date which will

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accommodate the interests of the Defendant and which will be just in the premises.

LAWRENCE E. KING, Defendant

By _____

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion for Extension of Discovery Deadlines was served by depositing in the U.S. Mail, postage prepaid on this 26 day of February, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114.

_____

Steven E. Achelpohl
Marilyn N. Abbott

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	]	Case Number: CR89-0-63
Plaintiff,	]	
vs.	]	MOTION FOR A CHANGE OF VENUE PURSUANT TO FED. R. CRIM. P. 21(a)
ALICE PLOCHE KING,	]	
Defendant.	]	

COMES NOW the Defendant, pursuant to Rule 21 of the Federal Rules of Criminal Procedure, and moves to transfer the proceedings to another judicial district and states:

1. Commencing on November 1, 1988 and continuing to February 15, 1990, the Omaha World-Herald has carried 638 stories, sensationalyzing the case in which Defendant is indicted. This newspaper has a general circulation of 139,094 and a Sunday circulation of 166,327, extending through the district and into most of the homes from which prospective veniremen must be selected if this case remains for trial in this district. Such publicity transcends the normal amount of newspaper comment concerning the Defendant and the case pending.

2. In addition to the circulation of rumors and stories in aforesaid newspaper, each of the radio stations in the city of Omaha has similarly broadcast publicity.

3. KMTV presently airs "Franklin File", Friday nights at 10:30 P.M.

4. Allegations of homosexual prostitution and child abuse linked to Larry King, co-defendant, has placed before the prospective jurors in this cause information which is irrelevent to Alice Ploch King, Defendant, and has prejudiced the prospective jurors against Defendant.

147A-571

5. The nature and volume of publicity has caused the citizenry of this district to be prejudiced against Defendant, so that she cannot obtain a fair and impartial trial.

WHEREFORE, Defendant, Alice P. King, requests the Court set a hearing date and permit Defendant to offer evidence in support of her motion and upon completion of said hearing, to transfer this cause to another district in the Eighth Circuit, where a fair and impartial trial may be had.

Dated this 22nd day of February, 1990.

ALICE PLOCHE KING, Defendant

By Jerold V. Fennell

Jerold V. Fennell #11266
Suite 270 Regency Court
120 Regency Parkway
Omaha, NE 68114
(402) 393-1286
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion for Change of Venue was sent to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, Nebraska 68101 on the 22nd day of February, 1990.

Edith J Pickle

FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
- ☒ Teletype
- ☐ Facsimile
- ☐ _____

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☒ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☒ UNCLAS

Date 3/15/90

~~FM FBI OMAHA (147A-571) (P)~~

TO DIRECTOR FBI/ROUTINE/

FBI MIAMI (147A-1762)/ROUTINE/

BT

UNCLAS

CITE: //3600//

PASS: ATTENTION LIAISON OFFICE, SSA [redacted] b6 b7C

SUBJECT: [redacted] PRESIDENT, FRANKLIN COMMUNITY FEDERAL CREDIT UNION, OMAHA, NEBRASKA, ET AL; FAG-HUD; IRS TAXES; MF; WF; BF&E; OO:OMAHA.

REFERENCE OMAHA TELEPHONE CALL TO MIAMI DATED 3/8/90.

FOR INFORMATION OF MIAMI, THE ABOVE CAPTIONED MATTER IS SCHEDULED FOR TRIAL IN JUNE, 1990. AS A RESULT OF THE TRIAL DATE, IT IS REQUESTED THAT FD-302'S BE FORWARDED TO OMAHA REGARDING INTERVIEWS CONDUCTED BY SSA [redacted] ON

MAM:sa
(1)

THURSDAY FLOPPY #4

[redacted]

147A 571 #680

Approved: _____ Transmitted SMA008D.074 (Number) (Time) Per Searched

Serialized DC

Indexed

Filed DC

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FBI/DOJ

FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
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PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

^PAGE TWO OM 147A-571 UNCLAS

MAY 10, 1989, OF THE FOLLOWING:

1. THE HONORABLE LEE CROFT ROBINSON
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted]

b6
b7C

IN ADDITION TO THE ABOVE, IT IS REQUESTED SSA [redacted] CONTACT THE ABOVE INDIVIDUALS REGARDING AN INVITATION TO APPEAR BEFORE THE COURT PROCEEDINGS REGARDING [redacted], AND HIS [redacted] TO TESTIFY REGARDING AN ALLEGED INHERITANCE RECEIVED BY [redacted]

MIAMI DIVISION AT MIAMI, FLORIDA:

WILL FORWARD FD-302'S CONDUCTED ON MAY 10, 1989, BY SSA [redacted] REGARDING THE ABOVE LISTED INDIVIDUALS TO THE OMAHA DIVISION.

WILL CONTACT THE ABOVE INDIVIDUALS FOR AN INVITATION TO ATTEND COURT PROCEEDINGS REGARDING THE ABOVE CAPTIONED MATTER SCHEDULED FOR JUNE, 1990.

BT

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff(s),	)	CR89-0-63
vs.	)	**MEMORANDUM AND ORDER**
LAWRENCE E. KING, JR., Defendant(s).	)	

On March 19, 1990, a status conference was held on the question of Mr. King's competency. At that conference I appointed Mr. Alan Stoler to represent Mr. King's "expressed interests" in contesting the report of the United States Medical Center for Federal Prisoners at Springfield, Missouri (Medical Center) which report found Mr. King incompetent to stand trial. However, I did not relieve Mr. King's previous court-appointed counsel -- Steven Achelpohl and Marilyn Abbott -- from continuing to represent Mr. King at the competency hearing as well as in the general defense of the case. At the status conference, Mr. Stoler moved for an appointment of another evaluator, pursuant to 18 U.S.C. § 4247(b). In effect, Mr. Stoler wanted a "second opinion" on the question of competency. Alternatively, Mr. Stoler moved for the appointment of a defense expert to assist in the presentation of Mr. King's defense against the incompetency claim pursuant to 18 U.S.C. § 3006A(e).

I will deny the motion for another independent evaluator. There is no reason to question either the ability or the integrity of the author of the medical center report. The author is a multi-board certified psychiatrist, who serves as Chief of Psychiatry at

the medical center. The report was prepared after thirty days of study. The author of the report is an expert for the court, and does not act for the prosecution or the defense; rather, the author of the report is to serve the court in a non-partisan manner. **United States v. Rinchack**, 820 F.2d 1557, 1565 n. 10 (11th Cir. 1987). Accordingly, I see no reason for another independent evaluation.

The request for a defense expert pursuant to 18 U.S.C. § 3006A(e) is another matter. Although the defense has already had access to a fully qualified expert -- Dr. Modlin -- under the provisions of 18 U.S.C. § 3006A(e), it is apparent that Dr. Modlin believes that Mr. King is not presently competent to stand trial. In most other circumstances, one defense expert would be enough. **See Rinchack**, 820 F.2d at 1566. However, this is an unusual case. Both the report of the medical center and an initial defense evaluation agree that defendant is not competent. However, defendant contends he is competent. The defendant now has additional counsel to protect his right not to be adjudged incompetent except upon an adequate showing. Therefore, some latitude is necessary under the circumstances to preserve the defendant's liberty interests. Accordingly, I will grant the motion, but I emphasize that I do not intend to delay these proceedings as a result of granting this motion.[1]

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[1] As suggested by Mr. Achelpohl, I attempted to determine whether yet another evaluation of Mr. King would be medically harmful to Mr. King. I instructed the pretrial services officer, Mr. Ranheim, to contact if possible, the author of the medical center report and Dr. Modlin. Mr. Ranheim reports to me that he

I have consulted, **ex parte**, with Mr. Stoler as to the name of a suitable defense expert. Mr. Stoler has advised me of the name of a suitable person, and Mr. Stoler has requested that the United States Marshal Service maintain Mr. King at his present place of confinement because that place provides a convenient point of access for the defense expert. Accordingly, I will authorize Mr. Stoler to retain the expert suggested by him, and I will make the suggestion to the Marshal that he maintain the defendant at the present place of confinement so that the defense expert may have ready access to Mr. King. Once again, I emphasize that I do not intend to delay resolution of this matter because of the appointment of the defense expert.

IT IS ORDERED:

1. The oral motion for the appointment of a second independent evaluator pursuant to 18 U.S.C. § 4247 is denied;

2. The oral motion for the appointment of a defense expert pursuant to 18 U.S.C. § 3006A(e) is granted, but payment for such services shall be in an amount not to exceed the limitations provided therein, unless and until excess payments are authorized by the Chief Judge of the Circuit, or his designate;

3. Mr. Stoler may retain Dr. Stanley Moore, M.D., as a defense expert;

4. The United States Marshal is requested to maintain Mr.

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has been unable to contact the author of the medical center report, but that he has contacted Dr. Modlin. Dr. Modlin advised Mr. Ranheim that he did not believe that another evaluation would be harmful to Mr. King.

King at his present place of confinement so as to provide ready access to Mr. King by the defense expert;

5. Mr. Stoler is authorized to disclose to Dr. Moore any and all reports, letters, transcripts, and the like filed under seal in this case, but Dr. Moore shall not disclose these materials to any third party without prior court approval.

DATED this 20th day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff(s), vs. LAWRENCE E. KING, JR., Defendant(s).	)	CR89-0-63 **MEMORANDUM AND ORDER**

Pretrial Services Officer Donald Ranheim indicates that Dr. Modlin and Dr. Dysart are available to testify on March 29, 1990, commencing at 1:00 p.m. Pretrial Services Officer Ranheim indicates that Dr. Lypson is on vacation and cannot be contacted at this time. Accordingly,

IT IS ORDERED that an evidentiary hearing on the question of whether or not Mr. King is competent to stand trial is scheduled for March 29, 1990 at 1:00 p.m., before the undersigned.

DATED this 20th day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CR. 89-0-63
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
ALICE PLOCHE KING,	)	
	)	
Defendant.	)	

IT IS HEREBY ORDERED:

That Defendant's Motion for Production of Mental Competency Report (Filing #199) is denied, without prejudice.

DATED this 18th day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR, AND ALICE PLOCHE KING, Defendants.	)	CR 89-0-63 MEMORANDUM AND ORDER

IT IS ORDERED that:

1. The motions for a bill of particulars (~~Filings 166 and 177~~) are denied except as provided herein, to wit: to the extent not now stated in the superseding indictment, the government shall provide the defendants and file with the clerk a bill of particulars by May 7, 1990, if the government has knowledge of the particulars, or through the exercise of reasonable diligence can obtain such knowledge, stating with as much specificity as is reasonably possible, the following: (a) the government shall name all known conspirators; (b) the government shall specify the date each defendant joined the conspiracy, the act which the government contends evidences joinder in the conspiracy, the location where that act took place, and the name of any conspirator who was present on the date that act took place; (c) for each overt act alleged in Count 1 (paragraphs E 1 through and including E 18 (including Counts 2 through and including 40 if these counts are also incorporated by reference in Count 1 as overt acts)) the date the overt act occurred, the name of the conspirator who actually did the act or directed that it take place, the location where the overt act took place, and the names of any conspirator who was

present on the date that act took place;

2. The motions (filings 151 and 153) seeking the issuance of subpoenas duces tecum as to Tom Harvey and Mary Jane Harvey are granted as provided herein: (a) the clerk of the court shall issue the subpoenas as requested except that the party subject to the subpoena need not produce any plea agreements or presentence reports and (b) the place of production shall be as jointly agreed by and between counsel for Mr. King and the Government, and (c) the date of production shall be as jointly agreed by and between counsel for Mr. King and the Government, but no later than 21 calendar days prior to trial and no earlier than May 1, 1990;

3. The motions (filings 152, 154 and 155) seeking the issuance of subpoenas duces tecum as to Eric Anderson, Cindy Harvey and Billy Harvey are denied, without prejudice, because it appears that at this stage of the proceedings the motions are intended as a general fishing expedition and the descriptions of the documents sought are overbroad;

4. As suggested by the American Bar Association's Criminal Justice Mental Health Standards, Standard 7-4.12, motions and discovery responses which may fairly be conducted without the personal participation of Mr. King shall be submitted forthwith, and accordingly: (a) the motions for extension of time (filings 180 and 200) are granted in part and denied in part in conformity with this order; (b) within 10 days counsel for Mr. King shall file a notice listing all motions, notices required by the Federal Rules of Criminal Procedure, such as a Rule 12.2 notice, or discovery

responses which cannot be filed because they require in the opinion of counsel the personal participation of Mr. King; (c) otherwise, within 10 days counsel for Mr. King shall file all motions or discovery responses which can be filed because they do not require in the opinion of counsel the personal participation of Mr. King;[1]

5. If Mrs. King has not already done so, she should file within 10 days any pretrial motions she intends to file.

DATED this 22nd day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

[1]Proceedings that might validly be permitted without the participation of Mr. King include motions to suppress or dismiss which do not require the testimony of Mr. King to resolve factual issues, but are essentially predicated on legal grounds alone. Other motions which might validly proceed are discovery related motions in which the testimony of Mr. King is not necessary.

IN THE UNITED STATES DISTRICT COURT FOR
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,
PLAINTIFF,

VS. CR89-0-63

LAWERENCE E. KING, JR.
DEFENDANT.

MEMORANDUM AND ORDER

Upon the court's own motion,

IT IS ORDERED THAT:

1. The defendant is remanded to the custody of the Attorney General of the United States for a competency examination at the Federal Medical Facility, Springfield, Missouri, pursuant to the provisions of 18 U.S.C. §§ 4241(b), 4247(b) & (c), and said institution shall submit to the undersigned and all counsel of record a report of the evaluation within thirty (30) days of the date of this order;

2. The time between February 7, 1990, and the receipt of the court of the aforesaid report of mental examination is herewith deemed excludable time for all purposes, including the time within which an indictment must be filed or arraignment held with regard to indictment, 18 U.S.C. § 3161(h)(1)(A), for the reason that the defendant's competency is fundamental to the commencement and maintenance of a criminal prosecution, and competency cannot be determined without the foregoing described examination;

3. Within ten (10) days after receipt of the aforementioned report, if either party desires a hearing to

determine mental competency pursuant to 18 U.S.C. § 4241(a) & (d) or otherwise, such party shall notify the court in writing, or the court may dispose of the motion without hearing;

4. The mental competency examination shall be conducted as authorized by 18 U.S.C. §§ 4241(b) & 4247(b) & (c) and shall be conducted in such manner as to not unnecessarily interfere with the defendant's constitutional rights; and

5. The United States Marshal shall forthwith, with no delay, transport the defendant to and from Springfield, Missouri, at no cost to the defendant.

DATED this 7th day of February, 1990.

BY THE COURT:

Richard G. Kopf
U.S. Magistrate

FD-350 (Rev. 5-8-81)

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The Franklin tapes

Two witnesses said to have failed lie detector tests conducted by FBI

By Bill Kreifel
Journal Writer

Polygraph examinations have shown that two young men weren't being truthful in statements they made on videotape to a legislative investigator about certain people allegedly being involved in child sexual abuse incidents connected to the failed Franklin Community Federal Credit Union of Omaha, the Lincoln Journal has learned.

A person who spoke on condition of anonymity told the newspaper that the pair "failed" the lie detector tests, which were conducted by the FBI last week. The tests were given as part of the bureau's independent investigation of Franklin, not at the direction of a federal grand jury in Omaha that is conducting a similar probe.

The person said the tests showed that the two men, 21 and 23, were telling the truth when they indicated during questioning that they had made up a story given to Lincoln private detective Gary Caradori. Caradori is the investigator for the special legislative committee that has been looking into allegations of child abuse and other alleged criminal misconduct connected to Franklin.

The person said there is little doubt that some homosexual activities occurred within the sphere of the Franklin case, "but nothing shows that it was anything but between consenting adults."

Omaha lawyer Marc Delman, attorney for the 23-year-old man, declined to confirm or deny that a polygraph examination was taken by his client, referring questions to the FBI.

"There will be no comment on the matter," said Charles Lontor, special agent in charge of the FBI's Omaha office.

Lincoln attorney Pamela Vucketich, lawyer for the 21-year-old man and a 21-year-old woman who also made videotaped statements to Caradori about alleged child sexual abuse connected to Franklin, said that her male client took a polygraph test given by an FBI examiner in Omaha on March 21. She said she was not aware of the results of the test.

Vucketich said that her female client has not yet been given a polygraph test by the bureau. "We aren't even done interviewing her," she said. "That's been a long process and we probably have a week or a week and a half (of

See TESTS on page 6

FBI/DOJ

From Page 1

Tests

questioning) left."

The person who spoke to the Journal said it is likely that the results of the tests of the two men will be forwarded to the federal grand jury for consideration, and that the information eventually might find its way to the Douglas County grand jury that began its own probe of Franklin last week.

The results of polygraph examinations cannot be used in criminal trials because of questions about their reliability. Even professional polygraphists acknowledge that the "lie detector" isn't 100 percent accurate. They say most of its bad reputation has been caused by unskilled people who have claimed to be polygraph experts.

However, there is nothing to prevent a grand jury from considering the results of such tests as a part of the total evidentiary package on which it bases its indictment decisions.

The person who spoke to the Journal said that some of the videotaped statements might have stemmed from hopes of some financial reward on the part of the witnesses, possibly by selling book or television rights to the story.

Noting that the female witness is an inmate at the Nebraska Center for Women in York, the person said the statements also might have been made in hopes of getting her out of that institution.

Frank Gunter, former director of the state Department of Corrections, previously was quoted as saying that the woman had told prison officials that someone connected to the legislative committee investigation had said that in return for her cooperation she could qualify for an extended-leave program or get a reduced sentence.

Gunter didn't identify the person who allegedly made that statement.

Three members of the Legislature's Franklin committee said they weren't aware that the FBI had conducted polygraph tests of the witnesses, let alone what the test results showed.

Sen. Jerome Warner of Waverly said he would be interested in the methodology used in the examinations and in the types of questions that were asked. "I'd be curious to know how they proceeded," he said.

Warner said it is his understanding that the witnesses had been placed under oath by Caradori for the videotaped testimony. Because immunity has been granted to them by the federal and Douglas County grand juries, Warner said, he doubts that the committee could do much if it turns out they lied.

Sens. Dan Lynch and Bernice Labedz, both of Omaha, said that for some time the committee has had an interest in interviewing those three witnesses in a closed-door session.

Lynch said now might be a good time to do that, but he is "not really interested in what the FBI says (about their truthfulness) until they also polygraph the persons named" by those witnesses who have said they were victims of and witnesses to child sexual abuse.

Labedz said the committee has some questions it would like to ask the witnesses, "and I thought it was a good idea to bring them forward."

Asked if those questions stem from the committee's desire for more detail and elaboration or a concern about their veracity, Labedz said: "I don't really feel I want to answer that."

Uncertain of response

Delman said he isn't sure what his response would be if the committee sought to interview his client.

"If we are subpoenaed (by the senators), I would think about it. But quite honestly, it has been my position since I've been involved that it is important to let the criminal justice system do what it has to do, and anything that interferes with that criminal justice system I don't think is appropriate," said Delman, a former deputy Douglas County attorney who served as a prosecutor for eight years.

Vuchetich said she, too, feels the matter should be left in the hands of the two grand juries and law enforcement investigators and said she would tend to resist having either of her clients appear before the senators.

"I think the committee (members) have achieved their objective, and I don't think they need to be talking to the witnesses at this point. We have a criminal justice system in place, and that's the proper forum," Vuchetich said.

Sen. Loran Schmit of Bellwood, Franklin committee chairman, and committee member Sen. Dennis Baack of Kimball could not be reached for comment.

FD-350 (Rev. 5-8-81)

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Extensive accounts of sex, drugs given in videotaped statements

By Kathleen Rutledge and Fred Knapp
Journal Statehouse Bureau

Two prominent Omaha businessmen are mentioned often in two young men's accounts of sex and drugs heard by the Legislature's special Franklin committee.

Their statements to investigator Gary A. Caradori were videotaped in the course of the committee's investigation of the failed Franklin Community Federal Credit Union of Omaha and the tapes were turned over to law enforcement agencies in December. The Journal has learned what was on some of those tapes.

The most extensive accounts were given by the older of the two witnesses, who is 23 but said he was 17 when he first had sex with the first businessman.

The youth tells of the first businessman having sex with him and with a 12- or 13-year-old boy at a Des Moines, Iowa, hotel; of the second businessman burning him on the buttocks with a cigarette during a sexual encounter in Omaha; and of flying to Los Angeles to buy cocaine for the first businessman.

The other young man, who is 21, said he originally had sex with the first businessman perhaps in late 1983, when he was in the 10th grade. He said the first businessman later introduced him to the second businessman, who once hit him on the head with a shoe after they had sex.

Most of the incidents mentioned by the two young men happened between 1983 and 1988. The limit on prosecuting many crimes is three years. Last year, the Legislature extended the limit to five years on child sexual assault and this year is proposing to extend it to seven years for certain crimes against children on which the limit has not already expired.

Following are some of the incidents the young men described in their videotaped statements, which Committee Chairman Loran Schmit of Bellwood previously has said were given under oath:

First meetings

The older witness said a friend of his took him to an apartment at the Twin Towers in Omaha, where he was introduced to the first businessman and given a vodka tonic. He said he was 17.

"I did have a clear view of why I was there. I was going

See VIDEOTAPES on page 7

FBI/DOJ

to ex[redacted]ge, I was going there to let him have [redacted] sex with me for money," the witness said. He said he went only because he thought he would get $50.

He said he returned to the apartment later that afternoon and the man met him at the door in a bathrobe. "It was a yellow Ralph Lauren bathrobe. I know because he gave me one and I still have it," the witness said.

He said the businessman performed oral sex on him and, after they showered together, the witness said he found four $50 bills on his pile of clothes.

Their second meeting occurred when the man picked him up near his Council Bluffs home in a black Laser and drove him to the Omaha apartment, he said. The Plymouth Laser came out in spring 1989 and is a 1990 model, according to Gotfredson Chrysler-Plymouth in Lincoln.

The witness said the man performed oral sex, then had him lean over the bar of a treadmill in the bedroom while the man attempted to have anal sex with him. He said he received $300.

The younger witness said he met the first businessman in late 1983, when he was in the 10th grade. He said his friend, the older witness, took him to the man's apartment. He referred to having oral sex with the man and being paid $50 on more than one occasion.

When the older witness described the first time his friend met the man, he said it occurred around May 1985 and his friend was 16.

He said the younger boy was curious about how he was getting money. "I explained to him I wasn't a homosexual but I would let men have oral sex with me for money," the older witness said. He said the friend later indicated he might want to try it.

The older witness said his friend came off the elevator after seeing the man, "kind of singing and shadow boxing." He said the friend claimed he received $400 and no sexual activity occurred, but the boy later told him he had had sex with the businessman.

Trip to Des Moines

The older witness said the first businessman drove him and a young boy to Des Moines in a tan Mercedes on Feb. 5, 1984.

He said they [redacted]ed in a single room at a downtown [redacted]Moines hotel and the businessman performed oral sex on both boys. He said he did not know the boy, who appeared to be about 12 or 13.

3 weeks at motel

The older witness said he met the second businessman in July 1984 at a bar in Omaha. He said the man knew him because the other businessman had "circulated my picture to him."

He said the second businessman later put him up for three weeks at an Omaha motel during August and September 1984. He said they had oral sex and he also had anal sex for the first time during that period.

He said the man later rented an apartment for him in Omaha, near Mutual of Omaha.

Anal sex act

The older witness said the second businessman brought a young boy, who he thought was in eighth grade, to the witness' apartment around December 1984. He gave the boy's full name and guessed he might be 15.

The witness said he once saw the businessman perform an anal sex act on the boy while the witness masturbated the boy.

Party at Twin Towers

The older witness described a party at the Twin Towers, possibly in August 1985, at which people were using cocaine.

He said a boy about 15 years old was in the middle of the room while one man fondled him and another performed a sexual act on him.

The witness also said he saw a man who was watching this and masturbating. He said he didn't know his name "until I saw a photograph." He said he is now 98 percent sure of the identity. The name he mentioned is that of an Omaha public official.

Cigarette burn

The older witness said he attended a party at the Woodmen Tower in Omaha in August 1985 at which "I was forced to, to, uh, to have sex with my friend, oral sex with my best friend." He said he was 18 and his friend was 16.

He said the second businessman, another man and the two boys went to an office seven or eight floors down from the floor where the party was being held and discovered two men having sex on a desk. He said the two men were in their 20s.

He said the second businessman forced him to have oral sex with his friend and then put out a cigarette on the older boy's buttock while having anal sex with him. The boy said he has a scar from the burn.

The younger boy's account differs in some respects. He said the party happened in March 1986. Neither boy was sure of the name of the other man who accompanied them and they each of-

younger boy estimated the two men having sex on the desk were 50 or 40, not in their 20s.

He said the other man who accompanied them started giving him oral sex. Asked if he was totally agreeable to this, he said, "Not that agreeable. I just figured, if I want the money for the cocaine, I guess I better do it."

He said the second businessman then made the other boy have oral sex with the younger boy. The younger boy said he pushed his friend away and the businessman got mad and burned the friend on the buttock.

At Bellevue motel

The older witness named a man who was an Omaha public official and said he saw him at a Bellevue motel having anal sex with an unidentified boy who was 15 or 16. The witness said he had been sent to the motel to deliver some papers from the second businessman.

Trip to Los Angeles

The older witness said he was given $4,000 by the first businessman to go to Los Angeles to pick up some cocaine. He said he also got $1,200 to $1,300 for expenses. The date of the trip is unclear.

He said he flew there with a young female friend, who also has given testimony to the committee, and they stayed for about three days at a little motel on the beach. On the third day, he said, he got a call from a man who then delivered the cocaine, which he tested with some liquid in a squirt bottle that turned the drug pink.

The younger male witness said he was introduced to the second businessman by the first businessman.

He said he had a sexual encounter in which the second businessman started to perform anal sex on him but he asked him to stop.

The witness said he then gave the second businessman oral sex. Afterwards, he said, the businessman hit him on the head with a shoe that was lying on the floor and cursed him because of something the young man had done during the sex act.

Trip to California

The older youth said he, his younger male friend and his female friend flew to California, maybe Pasadena, in a small airplane with the second businessman. He said it was in 1986 and he was 19, his male friend was 17 and the girl was 18.

Two "kids" on the plane with them were dropped off at two different places in California and did not return to Nebraska when the others did, he said. He said he didn't know what happened to them.

The witness said his two friends were taken from the airport to a house by an older man. He said he didn't know the detail of what they were going to do but he knew it would involve sex.

When they picked up his two friends to fly back to Nebraska, he said, the girl was a mess and smelled bad and the boy was angry and talked about wanting to kill someone.

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff,	)	CASE NO. CR89-0-63
vs.	)	BRIEF IN SUPPORT OF MOTION IN LIMINE
LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	

The Defendant is charged in a forty (40) count indictment alleging a twelve (12) year conspiracy to embezzle money from Franklin Community Federal Credit Union (FCFCU). Count I(E)(10) of the Indictment alleges that during a period between August 5, 1988 and August 15, 1988 the Defendant dictated a cassette tape to Mary Jane Harvey instructing her to prepare false documents to verify non-existing grants from the Presbytery of Missouri River Valley and other Presbyterian organizations to Consumer Services Organization for subsequent presentation to the Federal Grand Jury. The cassette tape is apparently one of the Government's main pieces of evidence with regard to the criminal conspiracy charge and allegations of obstruction of justice. It is the belief of the defense that the cassette tape involved was in the control and possession of Mary Jane Harvey, an unindicted co-conspirator who is now a Government witness from the time of its alleged inception in early August, 1988 to approximately December 1988. It is also the belief of the defense that Mary Jane Harvey turned this tape over to the Government in connection with her plea bargain arrangement. Prior to the closing of the credit union on November 4, 1988, it appears that the Government was unaware of the existence of the cassette tape. Although professional examination of the tape has not yet occurred, upon information and belief the defendant alleges that the cassette tape has been altered and is not authentic and

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correct. Due to the fact that pre-trial motions which do not require the participation of the Defendant are required to be filed, the motion was filed prior to the professional examination.

If at a later date, defense counsel believes participation of the Defendant at the hearing is necessary, the Court will be so advised.

In the case of United States v. Kandiel, 865 F.2d 967 (8th Cir. 1989) the court reaffirmed an earlier test for the admissibility of tapes under Federal Rules of Evidence 901(a). The earlier test was set forth in United States v. McMillan, 508 F.2d 101 (8th Cir. 1974), cert. denied, 421 U.S. 916 (1975). In Kandiel the court recited the seven foundational requirements established by McMillan for admitting tape recordings into evidence. Those seven foundational requirements are as follows:

1) the recording device was capable of taping the conversation;

2) the operator was competent to operate the device;

3) the recording is authentic and correct;

4) no changes, additions or deletions have been made in the recording;

5) the recording is shown to have been preserved;

6) the speakers are identified; and

7) the elicited conversation was made without inducement.

United States v. Kandiel, Id. at 974, n 2, citing United States v. McMillan.

In this case, the Defendant questions the authenticity of the tape and whether there have been additions or deletions. Further, unlike the facts involved in Kandiel, the tape recording was not found in the possession of the Defendant. Rather, we have a

situation where an unindicted co-conspirator who later enters into a plea bargain with the Government allegedly had sole possession of the tape for at least four months prior to the allegedly authentic tape being turned over to Government authorities. In view of the intervening events, i.e. the closing of the credit union, while the tape was still in the possession of Mary Jane Harvey, the tape recording itself is extremely suspect. There are serious questions as to authenticity and alteration. Further, the presence of a key piece of government evidence being in the hands of an unindicted co-conspirator raises serious questions with regard to whether the tape was properly preserved in the interim. It should also be emphasized that requests by defense counsel to interview either Earl Thomas Harvey, Jr. or Mary Jane Harvey have been denied by their defense counsel.

A Motion in Limine is appropriate in this situation because the question as to foundation for admission of this tape would require a lengthy evidentiary hearing in the midst of trial. The hearing would of necessity be held outside the hearing of the jury and would delay trial for some period of time. For this reason, the Defendant believes that an evidentiary hearing on the Motion in Limine in a pre-trial setting is appropriate.

WHEREFORE, the Defendant Lawrence E. King, Jr. moves this Court for an order prohibiting the use or introduction into evidence of the cassette tape referenced above.

LAWRENCE E. KING, Defendant

Dated: April 6, 1990

By Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Brief in Support of Motion in Limine was served by hand delivery to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Alan Stoler, 1004 Historic Library Plaza, Omaha, NE 68102 and by depositing in the U.S. Mail, postage prepaid Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 on this 6 day of April, 1990.

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff,	)	CASE NO. CR89-0-63
vs.	)	MOTION IN LIMINE
LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	

COMES NOW the Defendant, Lawrence E. King, Jr., and moves this Court for an order prohibiting the use or admission into evidence of a certain cassette tape recording by the Government at trial. In support of this Motion the Defendant shows the Court as follows:

1. Count I(E)(10) of the Indictment alleges that during the period between August 5, 1988 and August 15, 1988 the Defendant dictated a cassette tape to Mary Jane Harvey instructing her to prepare false documents to verify non-existent grants from the Presbytery of Missouri River Valley and other Presbyterian organizations to Consumer Services Organization for subsequent presentation to the Grand Jury.

2. Upon information and belief, the cassette tape in question was within the sole control and possession of Mary Jane Harvey, an unindicted co-conspirator who is now a Government witness, from approximately August 1988 to December 1988. The Defendant does not believe that the recording is authentic, correct or free from alteration. Further, possession of the cassette by an unindicted co-conspirator for at least four months prior to entering into a plea bargain with the Government raises severe doubts as to the proper preservation and authenticity of the cassette tape.

3. Pursuant to Federal Rule of Evidence 901(a) the admission of the cassette tape into evidence should be prohibited by this Court.

4. The Defendant requests an evidentiary hearing with regard to this Motion in Limine.

WHEREFORE, the Defendant Lawrence E. King, Jr., requests an Order of this Court prohibiting the use or introduction into evidence of the cassette tape referenced above.

LAWRENCE E. KING, Defendant

Dated: April 6, 1990

By Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion in Limine was served by hand deliver to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Alan Stoler, 1004 Historic Library Plaza, Omaha, NE 68102 and by placing in the U.S. Mail, postage to Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 on this 6 day of April, 1990

Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	CASE NO. CR89-0-63 MOTION TO SUPPRESS STATEMENTS OF DEFENDANT, LAWRENCE E. KING, JR.

COMES NOW the Defendant, Lawrence E. King, Jr. and moves this Court for an order suppressing various statements of the Defendant and prohibiting the use by the Government of such statements for any purpose at trial. In support of this Motion the Defendant states and alleges as follows:

1. The statements which the Defendant seeks to suppress are as follow:

A. Statement given to the Internal Revenue Service Criminal Investigation Division dated November 23, 1988.

B. Statement given to the Internal Revenue Service Criminal Investigation Division dated April 25, 1989.

C. Deposition of the Defendant dated November 18, 1988 taken in the civil proceeding entitled NCUAB v. Lawrence E. King, Jr., CV88-0-819.

D. Deposition dated March 31, 1989 taken in the civil proceeding entitled NCUAB v. Lawrence E. King, Jr., CV88-0-819.

2. The Defendant alleges that the above statements were given to governmental authorities involuntarily, unknowingly, and unintelligently and in violation of his 5th and 6th Amendment Rights under the United States Constitution and in violation of 18 U.S.C. §3501.

1474 571 689

3. An evidentiary hearing is requested and necessary for the

disposition of this motion and the participation of the Defendant in such evidentiary hearing is necessary.

4. Leave of the Court is requested for the filing of a legal brief following the evidentiary hearing with regard to this Motion.

WHEREFORE, the Defendant, Lawrence E. King, Jr. requests that this Court suppress the above-mentioned statements and prohibit the use by the Government of such statements at trial.

LAWRENCE E. KING, Defendant

By Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
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1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion to Suppress Statement by Defendant Lawrence E. King, Jr. was served hand delivery to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Alan Stoler, 1004 Historic Library Plaza, 1823 Harney St., Omaha, NE 68102, and by depositing in the U.S. Mail, postage prepaid to Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 on this 6 day of April, 1990.

Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	CASE NO. CR89-0-63 SECOND MOTION FOR PRODUCTION OF EXCULPATORY EVIDENCE UNDER BRADY V. MARYLAND AND MOTION TO SET DATE CERTAIN FOR PRODUCTION OF ALL BRADY MATERIAL AND MEMORANDUM IN SUPPORT THEREOF

Comes Now the Defendant, Lawrence E. King, Jr., and hereby moves for an Order requiring the production of exculpatory evidence under Brady v. Maryland, 373 U.S. 83 (1963). The Defendant further requests the Court to establish a date certain for such production. In support of said Motion, the Defendant states to the Court as follows:

1. This Court has previously, by Memorandum and Order dated June 13, 1989, ordered that the United States Attorney shall disclose all Brady material as soon as practicable. In such Memorandum and Order the Court also indicated that if the Defendants nevertheless file a Brady Motion, such Motion shall state with specificity the material sought. Further, by Memorandum and Order dated September 19, 1989, this Court indicated that while it would encourage the government to make Brady disclosures as soon as possible, the Court would set a reasonable, but specific, date prior to trial when the government shall produce all Brady material then known to exist and the date would be approximately sixty (60) days prior to trial.

2. This Court has previously set the trial of this case to begin June 4, 1990. Although the Defendant, Lawrence E. King, Jr. is currently undergoing treatment at a federal medical facility, it is uncertain at this time whether the current trial date of June 4, 1990 will still govern the time of trial. Because the current

trial date is less than 60 days away, the Defendant requests that this Court set an immediate and specific date for the production of all Brady material by the Government.

3. Without waiving the requirements of this Court's order of June 13, 1989 with respect to the production by the government of all Brady material, the Defendant moves this Court for an order requiring the government to produce the following materials:

A. Documents or other information in whatever form relating to any criminal proceedings or arrest or conviction records involving any witness the government intends to call at trial.

B. All writings, documents or information of any type relating to the following:

1) Plea agreements or negotiations for plea agreements involving government witnesses;

2) Any action taken for the benefit of or upon the request of a potential government witness by the United States or any other entity or person acting at its request;

3) Any promises, inducements, deals, representations or threats made to any witness either interviewed by government agents or who the government expects to call at trial which was used by the government to obtain testimony from the witness or to preclude or to induce the witness not to discuss the matter with defense counsel.

C. All documents, writings, reports, statements (whether received by the grand jury or by wiretap or electronic eavesdropping) of any person relating to receipt, use, or diversion of FCFCU funds directly or indirectly by any of the following persons: Earl Thomas Harvey, Jr., Mary Jane Harvey, Cynthia Harvey, William Harvey, Eric Anderson, or Bill Hansen.

D. Any document, memorandum, summary, recording or transcript of testimony whether given before the grand jury or by virtue of a wiretap or electronic eavesdropping which relates to any of the following items:

1) Exclusive control and/or knowledge of the accounting functions of the FCFCU by Earl Thomas Harvey, Jr.

2) The alteration or opportunity to alter accounts, accounting records or other bookkeeping records of the FCFCU by Earl Thomas Harvey, Jr., Cynthia Harvey or Mary Jane Harvey.

3) The lack of knowledge or control of Lawrence E. King, Jr. over or with regard to the accounting functions of the FCFCU, the computer systems of the FCFCU, the sale of certificate of deposits by the FCFCU, or the payment of bills and expenses of FCFCU.

4) Any attempt, design, plan, or other arrangement to avoid imparting knowledge of the functioning of CSO or FCFCU to Lawrence E. King, Jr. by 1) any employee of FCFCU or CSO including but not limited to employees involved with accounting functions of CSO and FCFCU or, 2) Mary Jane Harvey or William Harvey.

5) Direction, supervision or handling by any person other Lawrence E. King, Jr. of monies deposited or received by the FCFCU from the Defendant personally, or any business in which he held an interest.

6) The removal or relocation of records, documents or other materials of CSO or FCFCU from the homes of Earl Thomas Harvey, Jr., Mary Jane Harvey or William Harvey, when such removal or relocation of documents was not requested by the government.

7) The removal or relocation of any documents, writings or other materials from the homes of Earl Thomas Harvey, Jr., Mary Jane Harvey, Cynthia Harvey, or William Harvey other than at the request of governmental authorities which relate in anyway to the following:

a. personal expenditures of the Harvey family or any member thereof;

b. financial investments of the Harvey family or any member thereof;

c. account records or other financial records relating to Lawrence E. King, Jr. and/or Alice Ploche King;

d. financial, accounting, or bookkeeping records of CSO or FCFCU;

8) The undertaking or conducting of accounting or bookkeeping functions by Earl Thomas Harvey, Jr., Mary Jane Harvey, Cynthia Harvey or William Harvey at any location other than the FCFCU Building relating to FCFCU, CSO or Lawrence King, Jr.

E. All documents, records, statements of witnesses, materials or information of any kind that relate in any manner to the receipt or deposit into FCFCU of personal monies of Lawrence E. King, Jr. and/or Alice Ploche King or monies from businesses in which they held an ownership interest.

F. All agreements, contracts, memoranda of understanding, correspondence or information of any kind between or among the following governmental agencies: United States Department of Justice, United States Attorney's Office, Internal Revenue Service, National Credit Union Administration, relating in any way to the development of evidence or information for the criminal prosecution of Lawrence E. King, Jr. and/or Alice Ploche King, including without limitation any agreements or understandings relating to the search of FCFCU/CSO, the seizure of documents from the premises of FCFCU/CSO, or the subpoena of such documents or tangible things by the grand jury, the IRS or FBI.

4. All documents, records, material or any information of any kind, in the possession of the United States, which tend to negate the specific intent of the Defendant to commit the crimes alleged in the Indictment.

MEMORANDUM IN SUPPORT OF MOTION

Brady v. Maryland, 373 U.S. 83 (1963), holds that "the suppression by the prosecution of evidence favorable to an accused, upon request, violates due process where the evidence is material

either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." See, Id. at 87. The Brady decision was more clearly defined in scope and application in United States v. Agurs, 427 U.S. 97 (1976). In Agurs, the United States Supreme Court outlined an outcome determinative standard of materiality, stating that: "A fair analysis of the holding in Brady indicates that implicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial." See Id. at 104. The Supreme Court further stated:

> Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.

Id. at 106.

Evidence which is "materially favorable to the accused" can be either direct or impeaching evidence. United States v. Campagnuolo, 592 F.2d 852, 859 (5th Cir. 1979). The Supreme Court in Giles v. Maryland, 386 U.S. 66 (1967), held that Brady may require disclosure of specific exculpatory information even if the information is contained in statements, reports, memoranda, or other work product material. The Eighth Circuit in Ogden v. Wolff, 522 F.2d 816 (8th Cir. 1975), held that the prosecutor must disclose evidence which is probative on the issue of guilt or innocence where nondisclosure would constitute a denial of due process.

United States v. Ahmad, 53 F.R.D. 186, (M.D. Pa. 1971), holds that exculpatory information having a material bearing on defense

preparation should be disclosed well in advance of trial. In Ahmad the Court held that it is the duty of the prosecutor to disclose exculpatory materials which not only are evidentiary, but those which provide leads to other evidence and evidence which is "merely impeaching" of government witnesses. "It is also the prosecutor's duty to use due diligence in obtaining from other government agencies such exculpatory evidence, for negligent non-disclosure violates due process". Id. at 193.

The key factor under Brady is materiality. If the Defendant's request is reasonably specific, the defense merely must show that evidence not disclosed "might have affected the outcome of the trial". United States v. Warhop, 732 F.2d 755, 778 (10th Cir. 1984). Failure to properly produce exculpatory evidence may result in a constitutional error requiring reversal if the suppressed evidence undermines confidence in the outcome of the trial. United States v. Bagley, 473 U.S. 667 (1985).

WHEREFORE the Defendant respectfully requests an Order of this Court setting a specific date for disclosure of all Brady material and directing the United States to produce and disclose the information described herein, and setting the terms, conditions, and timing of the production and disclosure.

LAWRENCE E. KING, Defendant

By Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
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Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion was served by hand delivery to Thomas D. Thalken,

First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and to Alan G. Stoler, 1823 Harney St., Suite 1004, Omaha, NE 68102 and by depositing in the U.S. Mail, postage prepaid to Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 on this 6 day of April, 1990.

Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	CASE NO. CR89-0-63 MOTION TO SUPPRESS

Comes Now the Defendant, Lawrence E. King, Jr., and pursuant to the Fourth Amendment to the United States Constitution and Rule 41 of the Federal Rules of Criminal Procedure, hereby moves for an Order of this Court suppressing all documents, tangible things, and fruits derived from the search of the premises of the Franklin Community Federal Credit Union and Consumer Services Organization on November 4, 1988, the seizure of documents and tangible things from such premises on the same date, and the subpoena by the United States of further documents and tangible things on November 14, 1988. The Defendant alternatively moves for suppression of any privileged documents or tangible things derived from the search, seizure and compulsory process described above.

The Defendant also moves for return of all documents and tangible items owned by him, which were seized or subpoenaed by the United States.

In support of this Motion, the Defendant offers a Brief in Support of this Motion to Suppress.

147A-571-691

Defendant hereby requests an evidentiary hearing on this Motion to Suppress.

LAWRENCE E. KING, Defendant

By _____
Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion to Suppress was served by depositing in the U.S. Mail, postage prepaid on this 6 day of April, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101; Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 and to Alan Stoler, 1004 Historic Library Plaza, 1823 Harney St., Omaha, NE 68102.

_____
Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendants.	)	CASE NO. CR89-0-63

BRIEF IN SUPPORT OF MOTION TO SUPPRESS

Respectfully submitted,

LAWRENCE E. KING, Defendant

Dated: April 6, 1990

By _____
Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000 147A-571-692

FACTS

The Defendant has moved for an order suppressing all fruits of a search of the Franklin Federal Credit Union (FCFCU) and Consumer Services Organization (CSO) on November 4, 1988, the seizure of documents and tangible things from the premises of FCFCU/CSO and the fruits of a grand jury subpoena which was issued on November 14, 1988. The Defendant has also moved for an order requiring the return of the property under Rule 41 of the Federal Rules of Criminal Procedure.

On November 4, 1988, United States Magistrate Richard G. Kopf issued search warrants authorizing the search of the premises of the FCFCU and CSO at both the north and south Omaha locations of these organizations, and the seizure of documents and things described in "Attachment I". The warrants were issued upon the Affidavit of Joseph R. Brazier, a Special Agent of the Criminal Division of the Internal Revenue Service, which was apparently attached to the warrants.

Civilly, the FCFCU was closed by order of the National Credit Union Administration (NCUA) on November 4, 1988. On that date, by Order of Conservatorship, the NCUA immediately took possession and control of the business and assets of the Credit Union, including all books and records of the FCFCU and all personal records of the Defendant King which were kept on the premises of FCFCU and CSO. By November 4, 1988, the government and the NCUA had seized all records of the FCFCU as well as all other property situated on the premises of the FCFCU, whether belonging to the FCFCU, CSO or otherwise. On November 14, 1988, the federal grand jury sitting in this District subpoenaed "[a]ny and all records of Franklin Community Federal Credit Union". Thus, by November 14, 1988, the United States had exercised control, by search and seizure on November 4, 1988, and by grand jury subpoena on November 14, 1988, of virtually every document and tangible thing in existence on the premises of FCFCU/CSO on November 4, 1988. On information and belief, the search and seizure which occurred on November 4, 1988,

was a coordinated effort of the United States Department of Justice and the National Credit Union Administration.[1]

As a result of these related events, the United States seized all records of the FCFCU and CSO. The only judicial authorization for the seizure by the United States of what constitutes two rooms full of documents was the Magistrate's search warrants, dated November 4, 1988, which simply incorporated by reference the Affidavit of Special Agent Brazier.

While theoretically not as broad as the ultimate search and seizure which was accomplished by the United States, the search warrant authorized the seizure of virtually every document on the premises of FCFCU and CSO, at all locations where these businesses operated. With respect to both organizations, the search warrant authorized the seizure of the following records:

A. Records of Consumer Service(s) Organization, Inc. for the period January 1, 1982 through the present:

1. Corporate Resolutions and Corporate Minutes Books.

2. General Journals, Cash Receipt Journals and Cash disbursement Journals.

3. Financial Statements, General Ledgers and Subsidiary Ledgers which include Notes Receivable, Accounts receivable, Accounts Payable, Closing Ledgers, Check registers and Payroll Registers.

4. Bank Statements, Deposit Slips, Withdrawal Slips and Canceled Checks for any and all bank accounts

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[1]Because of the discovery limitations embodied in the Federal Rules of Criminal Procedure, the information available to the Defendant is quite limited as to the circumstances of cooperation between the United States Department of Justice and the National Credit Union Administration. The Defendant's knowledge is also limited as to the availability of investigative information which could have been included in the Special Agent's Affidavit. Accordingly, the Defendant has moved for an evidentiary hearing on this Motion at which he intends to subpoena the officials who were involved in the events leading up to and following the search and seizure of the FCFCU/CSO and the closure of the FCFCU by the NCUA.

including all funds on deposits such as Certificates of Deposit and Money Market Accounts.

5. Receipts and Invoices for all Expenditures, including but not limited to operating expenses.

6. All Federal Tax Returns, Forms 990, 940, and 941 filed or not filed and Supporting Workpapers, Summary Sheets and analysis used in the preparation of the Tax Returns.

7. Gift, Grant or Contribution Documents.

8. Travel Records, Expense Vouchers and Expense Records.

9. Any and all Computer Storage Devices which reflect information specified in Items (A1-A8), including but not limited to Computer Disks, Computer Hardware and Software Equipment.

B. Records of Franklin Community Federal Credit Union for the period January 1, 1982 through the present:

1. Corporate Resolutions and corporate Minutes Books.

2. General Journals, Cash Receipts Journals and Cash Disbursement Journals.

3. Financial Statements, General Ledgers and Subsidiary Ledgers which include Notes Receivable, Accounts Receivable, Accounts Payable, Notes Payable, Closing Ledgers, Check Registers and Payroll Registers.

4. Bank Statements, Deposit Slips, Withdrawal Slips and Canceled checks for any and all bank accounts held for and/or on the behalf of Franklin Community Federal Credit Union, including all funds on deposits such as Certificates of Deposits and Money Market Accounts.

5. Receipts and Invoices for all Expenditures including but not limited to operating expenses.

6. All Federal Tax Returns, Forms 940 and 941 filed or not filed and supporting Workpapers, Summary Sheets and Analysis used in the preparation of the Tax Returns.

7. Travel Records, Expense Vouchers and Expense Records.

8. All Records and Documents pertaining to Telephone Solicitations of perspective depositors requesting the person solicited to deposit funds in any amount in the form of Certificates of Deposit or other instruments at the Franklin Community Federal Credit Union including but not limited to Index Cards, Handwritten or Typewritten Memos, Logs, Typewritten Lists, Handwritten Lists and Computer Lists.

9. Any lists of Certificates of Deposit in the Franklin Community Federal Credit Union.

10. IRS Forms 1099 issued or prepared for the Franklin Community Federal Credit Union indicating the payment of interest on any Certificate of Deposit in the Franklin Community Federal Credit Union.

11. Documents reflecting Wire Transfers of Funds to and from purchasers of Certificates of Deposit from Franklin Community Federal Credit Union.

12. Any and all Computer Storage Devices which reflect information specified in Items (B1-B11), including but not limited to Computer Disks, Computer Hardware and Software Equipment.

In addition to the confiscation of every document of FCFCU and CSO, the search and seizure has resulted in the misappropriation of virtually every personal document of the Defendant's which was located on the premises of the FCFCU/CSO. The Defendant King did not consent to the search and seizure of the FCFCU/CSO books, records, and tangible things.[2]

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[2]Because of the mass of the documents and tangible things which have been confiscated by the United States and the NCUA, and the absence of any specificity or detail from the government as to what documents it will offer as evidence at the trial, the Defendant is badly situated to describe with any particularity which documents he wishes to suppress. The government represents that prior to the hearing on this motion, it will specify which documents it will seek to evidence at trial, which constitute

LAW

I. Standing[3]

To challenge a search and seizure on Fourth Amendment grounds, a defendant must establish prejudice to his own constitutional right to be secure in his person, house, papers and effects. Standing to invoke suppression of evidence "has thus been limited to cases in which the prosecution seeks to use the fruits of an illegal search or seizure against the victim of police misconduct." United States v. Leon, 468 U.S. 897, 910, 104 S.St. 3405, 82 L.Ed. 2d 677 (1984).

To invoke the Fourth Amendment as grounds for suppression of evidence the claimant must show a subjective expectation of privacy in the area searched and that expectation must be one that society is prepared to recognize as "reasonable". United States v. Leary, 846 F.2d 592, 595 (10th Cir. 1988). "Whether a person has standing to contest a search on Fourth Amendment grounds turns on whether the person had a legitimate expectation of privacy in the area searched, not merely in the items seized." United States v. Skowronski, 827 F.2d 1414, 1418 (10th Cir. 1987)(citing (United States v. Salvucci, 448 U.S. 83, 93, 100 S.Ct. 2547, 2554, 65 L.Ed.2d 619 (1980).

> [T]hus, suppression of evidence will be an appropriate remedy only when a person's rights have been violated by the search itself; it is not enough that a person is aggrieved by the introduction of damaging evidence derived from the search.

827 F. 2d at 1418.

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fruits of the search, seizure and subpoena described herein.

[3]If the Government elects to contest standing, the testimony of the Defendant King will be necessary at the evidentiary hearing on this Motion.

"There is no doubt that a corporate officer or employee may assert a reasonable or legitimate expectation of privacy in his corporate office." United States v. Leary, supra, (citing Mancusi v. DeForte, 392 U.S. 364, 369, 88 S.Ct. 2120, 2124, 20 L.Ed. 2d 1145 (1968)).

In Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421 58 L.Ed. 2d 387 (1978), the Supreme Court abandoned a 'standing' analysis for fourth amendment violations claims. Rather the inquiry is one "involving the substantive question of whether or not the proponent of the motion to suppress has had his own Fourth Amendment rights infringed by the search and seizure which he seeks to challenge." Id. at 133, 99 S.Ct. at 425. The Court reasoned that conferring standing to raise Fourth Amendment claims would necessarily mean a more widespread invocation of suppression during criminal trials.

The Defendant King clearly has standing to contest the search, seizure and subpoena. A corporate officer clearly has the right to assert a subjective expectation of privacy in corporate premises. The very nature of the documents seized, which include volumes of private and in some cases privileged correspondence and other documents owned by the Defendant speaks to the expectation of privacy which King and others had with respect to the FCFCU premises.

II. Requirement of Particularity.

We submit that the search of the FCFCU and CSO, and the seizure of records and tangible things, as a result of either the search warrants executed on November 4, 1988, and the grand jury subpoena executed on November 14, 1988, and cumulatively, were so broad as to violate the Fourth Amendment's prohibition against "unreasonable" searches and seizures. We also submit that the United States failed to comply with the warrant requirement of the Fourth Amendment because the supporting affidavit was insufficient

to establish the existence of probable cause.

The Fourth Amendment requires that search warrants particularly describe the items to be seized to prevent the use of general warrants to conduct overly sweeping searches. United States v. Peterson, 867 F.2d 1110, 1113 (8th Cir. 1989). This requirement prevents a "general, exploratory rummaging in a person's belongings" (Coolidge v. New Hampshire, 403 U.S. 443, 467, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564 (1971)), and ensures that the search is confined to particularly described evidence relating to a specific crime of which probable cause has been demonstrated. "As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." Stanford v. Texas, 379 U.S. 476, 485, 85 S.Ct. 506, 511, 13 L.Ed.2d 431 (1965) (quoting Marron v. United States, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927).

The amendment "consists of two separate clauses", one prohibiting unreasonable searches and seizures and the other prohibiting the issuance of warrants which fail to describe with particularity the place to be searched and the things to be seized. See, In re Grand Jury Proceedings, 716 F.2d 493, 497 (8th Cir. 1983). As the Supreme Court stated in Andresen v. Maryland, 427 U.S. 463, 480 (1976):

> General warrants, of course, are prohibited by the Fourth Amendment. "[T]he problem [of a general warrant] is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings . . . [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized." Coolidge v. New Hampshire, 403 U.S. 443, 467. This requirement "'makes general searches . . . impossible and prevents the seizure of one thing under a warrant describing another.

In United States v. Leary, 846 F.2d 592, 600 (10th Cir. 1988), the Court held that the warrant used to seize 20 boxes of business

records from an export company was impermissibly overbroad and suppressed the evidence. "The Fourth Amendment requires that the government describe the items to be seized with as much specificity as the government's knowledge and circumstances allow." Id. The Court found that the warrant "encompassed virtually every document that one might expect to find in a modern export company's office." Id. at 602. The warrant did not provide limitations or guidance. "As an irreducible minimum, a proper warrant must allow the executing officers to distinguish between items that may and may not be seized." Id. Similarly, in United States v. Fuccillo, 808 F.2d 173, 176 (1st Cir. 1987) cert denied, 482 U.S. 905 (1987), the court held that suppression was an appropriate remedy where agents were reckless in not including information in the affidavit supporting the warrant that was known or easily accessible to them; the court found that "the warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the items to be seized." Id.

The Eighth Circuit applies a standard of "practical accuracy" in determining whether a description in a warrant is sufficiently precise to satisfy the Fourth Amendment requirement, "recognizing that the degree of specificity required necessarily depends upon the circumstances of each particular case." United States v. Strand, 761 F.2d 449, 453 (8th Cir. 1985), United States v. Pillow, 842 F.2d 1001, 1004 (8th Cir. 1988).

In In re Grand Jury Proceedings, 716 F.2d 493 (8th Cir. 1983) cert denied, 482 U.S. 913 (1984), the FBI and IRS seized 16 boxes of records from a bail bonding business. The warrant contained a "laundry list" of various types of records to be seized. The Court found the warrant constitutionally defective because it consisted of little more than a broad statement of the types of records ordinarily kept by any bail bondsman, there were no designations or references to particular transactions or to specific individuals or files, or to a reasonably specific time within an approximate time

period. Id. at 498. "Where the warrant allows a seizure of everything, the items seized necessarily will correspond to the scope of the warrant. The crucial question is whether the warrant authorized too much under the law." Id. at 499. The Court found further that the affidavit of the FBI agent was a "broad, boilerplate statement describing in a general way the applications, reports and records that are commonly kept by any typical bail bond operation." Id. at 500. The affidavit had neither the detail nor the substance to give the issuing magistrate a substantial basis for concluding that probable cause existed.

In United States v. Cardwell, 680 F.2d 75 (9th Cir. 1982), defendant was convicted of conspiracy and aiding in preparation of a false corporate tax return. A search warrant authorizing "corporate books and records, including but not limited to canceled and duplicate checks, check stubs, journals, ledgers, weekly summaries, driver tip envelopes and daily schedules, of several corporations which are the fruits and instrumentalities of violations of the general tax evasion statute", was held to be overbroad and the evidence was suppressed. "If items that are illegal, fraudulent, or evidence of illegality are sought the warrant must contain some guidelines to aid the determination of what may or may not be seized". Id. at 78. Addressing the use in a search warrant of "generic classifications", the court held that when considering the totality of the circumstances in determining whether the warrant is sufficiently particularized, one of the crucial factors is the information available to the government. "Generic Classifications in a warrant are acceptable only when a more precise description is not possible". Id. (quoting United States v. Bright, 630 F.2d 804, 812 (5th Cir. 1980).

The Ninth Circuit concentrates of three questions to determine whether the description in a warrant is sufficiently precise: (1) whether probable cause exists to seize all items of a particular type described in a warrant, (2) whether the warrant sets out

objective standards by which executing officers can differentiate items subject to seizure from those that are not, and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued. United States v. Spilotro, 800 F.2d 959, 963 (9th Cir. 1986).

We are cognizant that in the "rare" case even a warrant stating "take every piece of paper related to the business"[4] may be sufficient if every transaction is potential evidence of fraud and the business "was fraudulent through and through". See, e.g., United States v. Bentley, 825 F.2d 1104, 1109-1110 (7th Cir. 1987). However,

> [t]his does not mean that warrants may use open-ended descriptions. The description must be as particular as the circumstances reasonably permit. So if the fraud infects only one part of the business, the warrant must be so limited--but within that portion of the business "all records" may be the most accurate and detailed description possible.
>
> * * *
>
> When there is probable cause to seize all, the warrant may be broad because it is unnecessary to distinguish things that may be taken from those that must be left undisturbed. A generic description adequately defines the officers' authority. When the probable cause covers fewer documents in a system, of files, the warrant must be more confined and tell the officers how to separate the documents to be seized from others.

Id. at 1110. Even where there is probable cause to believe that an organization is pervasively criminal, seizure of all of an organization's records is justified only if all of the records are

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[4]Here, the government took more than "every piece of paper relating to the business"; it took as well every piece of paper and thing belonging to the Defendant King as well.

relevant to the alleged crimes. Voss v. Bergsgaard, 774 F.2d 402 (10th Cir. 1985).

In Voss v. Bergsgaard, 774 F.2d 402 (10th Cir. 1985), IRS agents search three locations of an organization and seized a large volume of documents. The district court found that the warrant gave the government carte blanche to take anything they saw "whether it was nailed down or otherwise". The court declined to follow cases that allow seizure of all an organization's records, even when there is probable cause to believe the organization is pervasively criminal. Id. at 406. The court recognized that seizure of all records may be possible. "Where a warrant authorizes the seizure of particularly described records relevant to a specific crime and all of the organization's records, in fact, fall into that category they may all lawfully be seized." Id. The court required all the evidence seized under the warrants to be returned to the defendant organization.

Involving as it does a grand jury subpoena which was served by the United States on the National Credit Union Administration within ten days of the closing of the FCFCU, this case also concerns the search and seizure of all of the records of the FCFCU on November 14, 1988. Fourth Amendment rights apply to compulsory production of documents pursuant to a grand jury subpoena. See, Re Grand Jury Subpoena Duces Tecum Served on Allied Auto Sales, Inc. 606 F. Supp. 7 (D. R.I. 1983). In order for a subpoena to be enforceable, it must: 1. command only production of things relevant to the investigation; 2. specify things to be produced with reasonable particularity; and 3. require production of records covering only a reasonable period of time. Id.

In United States v. Spilotro, 800 F.2d 959 (9th Cir. 1986), the court struck down a warrant for the search of a jewelry store which authorized the seizure of "notebooks, notes, documents, address books, and other records; safe deposit box, keys cash, gem stones and other items of jewelry and other assets" which were

evidence of violations of several named federal statutes. The Court cited a three-prong test in determining whether the warrant contained the requisite specificity: 1. whether probable cause existed to seize all items of a particular type described in the warrant, 2. whether the warrant set out objective standards by which executing officers could differentiate items subject to seizure from those not subject to seizure, and 3. whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued[5]. Id. at 963. The Court noted that the government could have narrowed most of the descriptions in the warrants either by describing in greater detail the items one commonly expects to find on premises used for the criminal activities or by describing in more detail the criminal activities themselves. Because the warrants were insufficiently narrowed, they were unconstitutionally broad. Id. at 964. The Court stressed the importance of the information available to the government, noting that generic classifications in a warrant are acceptable only when a more precise description is not possible. Id. at 965.

In re Grand Jury Proceedings, 716 F.2d 493 (8th Cir. 1983), discussed supra, cited with approval United States v. Roche, 614 F.2d 6 (1st Cir. 1980), in which the subject affidavit referred to violations of 18 U.S.C. § 1341 (the mail fraud statute). The court in Roche held that such a reference in the affidavit provided no limitation at all since the statute was itself extremely broad in

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[5]In this case, the Affidavit which is incorporated into the warrants by reference identifies that Development Officer Morley kept a card file which recited the customers of certificates of deposit of the FCFCU. There was, however, no effort to recite any specific information or limitation relating to, customers, files, accounts, computer records or any other generic classification of documents.

scope.[6] It is not the mere reference to an statute prohibiting an extremely wide range of activities which makes the warrant overbroad. It is the absence of limiting features (glaringly present in this case) which renders the warrant unconstitutionally broad. See, United States v. Leary, 846 F.2d 592, 601 n. 15 (10th Cir. 1988).

This Circuit reversed another order denying return of property in Rickert v. Sweeney, 813 F.2d 907 (8th Cir. 1987). There, the Court, by Judge Bright, held that a warrant which authorized a general rummaging through the offices and company records was not supported by probable cause. "[S]ome measure must be taken not only to limit the discretion of the executing officer but also to inform the subjected person what the officers are entitled to take. Id. at 909. United States v. Cardwell, 680 F.2d at 77 discussed the inclusion of a reference to 26 U.S.C. § 7201 in the affidavit, holding that "[t]hat is not enough", and reasoning that "[i]f items that are illegal, fraudulent, or evidence of illegality are sought, the warrant must contain some guidelines to aid the determination of what may or may not be seized" aside from the statutory reference to a violation of federal law. Id. at 78.

III. The Warrants.

The warrants in this case are unnecessarily broad. It is difficult to conceive of any financial record of the FCFCU or CSO which was not, at least arguably, "within" the warrants. The Affidavit asked for and received permission for the seizure of

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[6]In this case, the Affidavit refers to 18 U.S.C. § 1344, 18 U.S.C. §371, 26 U.S.C. §7201, etc. This laundry list of federal statutes authorized the seizure of any document which could be characterized as evidence of a violation of a statutes broader than the mail fraud statute and accomplished no limiting effect whatsoever.

corporate resolutions, corporate minute books, general journals, cash receipt and disbursement journals, financial statements, subsidiary ledgers, notes receivable, accounts receivable, accounts payable, notes payable closing ledgers, check registers, payroll registers, bank statements, deposit slips, withdrawal slips, canceled checks "for any and all bank accounts including all funds on deposits such a certificates of deposit and money market accounts", receipts and invoices for all expenditures, including but not limited to operating expenses, all federal tax returns, gift, grant or contribution documents, travel record, expense vouchers and expense records, and any and all computer storage devices which reflect information specified above, and documents reflecting wire transfers of funds to and from purchasers of certificates of deposit. What document or tangible thing of FCFCU and CSO, it may be asked, may not fairly be included in this description of things to be seized.

There was no time limitation imposed on the documents and tangible things for which seizure was authorized. There was no limitation imposed as to customer or development officer in the case of certificates of deposit even though federal agents had access to Mr. Morley's personal records regarding certificate of deposit solicitation. The seizure was not limited to certain files within the FCFCU or CSO. The seizure was not limited to certain accounting records of the FCFCU or CSO. The seizure was not limited to certain accounts of FCFCU or CSO. The seizure was not limited to certain travel records, either by time or person. The seizure was not limited to certain tax returns or records of FCFCU/CSO. The seizure was not limited to any specific location within the offices of FCFCU or CSO, notwithstanding that the agents had access to Mr. Morley and probably other employees of FCFCU/CSO familiar with the operations, prior to executing the search warrant.

The fact is, to put it simply, the warrants were not limited

at all. While the document description was disguised in general descriptions of the types of documents sought, the descriptions were no less generic and all-encompassing than a request by law enforcement authorities, and authorization by the Magistrate, to "cart away all the documents".

The face of the Affidavit indicates that the agents had access to Mr. Morley's "personal index card file showing purchasers of CD's which reflect the name, address, denomination and terms of the CD." No effort was made to limit the records to be seized which related to the sale or purchase of certificates of deposit. The agents had access to officials from the NCUA who had audited FCFCU for more than a decade preceding the search and seizure. Yet there was no effort to limit, or even describe with modest specificity, the documents or things of the FCFCU, or CSO, which the agents wished to seize.

The Special Agent's Affidavit expressed the belief that evidence of violations would be found in the premises under a series of federal statutes ranging from the general conspiracy statute, to the tax evasion statute, to the bank fraud statute. In his search warrants, the Magistrate simply incorporated the Agent's Affidavit, thus apparently relying on the same cited federal statutes in the Special Agent's Affidavit. The nature of the federal violations cited--which are analogous to the reference to the mail fraud statute criticized in United States v. Roche, supra--rendered meaningless any reference to federal statutory violations at all.

The return filed in connection with the seizure describes the documents and things seized, in most cases, by the box instead of by document. Indeed, the warrant authorizing the seizure, and the seizure itself, were so broad that it is impossible to tell what was seized and what was not seized, much less what was authorized to be seized and what was not authorized to be seized. The affidavit requested, and the warrant gave, law enforcement

authorities an unlimited license to take whatever they wished, with no meaningful limitation on their authority other than to take what they wanted to take. The issuance of the grand jury subpoena ten days later for all documents of the FCFCU was the frosting on the cake.

A federal grand jury had been examining Mr. King's individual tax matters since 1985, or for a period of time encompassing more than three years preceding the request for and execution of the search warrants. Despite the participation of the United States Attorney and the FBI in the preparation of the Affidavit, there is not one reference to one piece of information relating the Mr. King's personal tax circumstances developed by the grand jury or any other investigation which could have been used in order to make the description of the reason for the issuance more specific, or the description of the places to be searched and things to be seized more specific.

FCFCU and CSO were not organizations which were permeated with fraud. Indeed, significant legitimate and lawful business activities were conducted for years by FCFCU and CSO. They had been audited for more than a decade previous by the NCUA without the slightest hint of any criminal wrongdoing.

As the records held in the federal depository attest, many documents of the Defendant King were seized which have nothing to do with the indictment or violation of any of the several federal statutes listed in the Affidavit. This was the natural and foreseeable result of "carting away all of the documents". Many of these documents are actually private letters between the Defendant King and his own lawyers. Some of these documents have been held to be privileged documents in civil litigation instituted by the NCUA. Many are purely private correspondence between the Defendant King and an infinite number of other people.

The warrants were unnecessarily broad and the search, seizure and subpoena violated the Defendant's rights under the Fourth

Amendment.

IV. The Exclusionary Rule.

Under the Fourth Amendment exclusionary rule, evidence obtained in an illegal search is not admissible in federal court proceedings. This rule prohibits the introduction of tangible materials, testimony concerning knowledge, and derivative evidence that is the product of the primary evidence obtained during an unlawful search or that is acquired as an indirect result of the unlawful search. The exclusionary rule operates as a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than as a personal constitutional right of the aggrieved party. 12A Fed. Proc., L.Ed §33:610.

The exclusionary rule was addressed in United States v. Leon, 468 U.S. 897, 194 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The issue before the court was whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case in chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. The court concluded that "suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." See, 468 U.S. at 918. The determination of whether illegally seized evidence is to be suppressed requires a balancing of the "costs and benefits of preventing the use in the prosecution's case in chief of inherently trustworthy tangible evidence obtained in reliance on a search warrant issued by a detached and neutral magistrate that ultimately is found to be defective", Id. at 907, with "[marginal or nonexistent] benefits produced by suppressing evidence obtained in

objectively reasonable reliance on a subsequently invalidated search warrant", in terms of social cost. Id. at 922. The court held,

> [I]n the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.

Id. at 926 (emphasis added). The reliance must be "objectively reasonable":

> Suppression remains appropriate in circumstances where the officer(s) involved have no reasonable grounds for believing that the warrant was properly issued. . . . Moreover, it is necessary to consider the objective reasonableness, no only of the officers who eventually execute a warrant, but also of the officers who originally obtained it, or who provided information material to the probable cause determination.

United States v. Reivich, 610 F. Supp. 538, 545 (W.D. Mo. 1985). Suppression remains appropriate in the case of a law enforcement officer misleading a magistrate or other judicial officer in connection with information available to the law enforcement officer, but not imparted to the judicial officer.[7] Where a warrant is unnecessarily broad because the agent did not take every step that could be reasonably be expected of him, as here, the agent can not reasonably rely on the warrant and suppression will be mandated. United States v. Crozier, 777 F.2d 1376, 1381-82 (9th Cir. 1985). And the good-faith exception to the exclusionary rule will not be applied unless officers executed the search warrants

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[7]Again, an evidentiary hearing is necessary with respect to the circumstances leading up to the request for and execution of the search warrants and the subpoena in this case.

within their terms. See United States v. Fuccillo, 808 F.2d 173, 177 (1st Cir. 1987)(overbroad search warrants invalidated and suppression required where officers exceeded the scope of a warrant which was so facially deficient that the executing officers could not reasonably presume it to be valid). See also, United States v. Stubbs, 873 F.2d 210 (9th Cir. 1989). As the Eighth Circuit has stated:

> The [holding of the Supreme Court] is designed to apply to cases 'when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope.' . . . This is not such a case. Here, the warrant did not authorize the seizure of ordinary household items, and we do not believe that there is an objectively reasonable basis for the postal inspectors to have believed that the warrant authorized the seizure of such items.

United States v. Strand, 761 F.2d 449, 456 (8th Cir. 1985)(emphasis added).

The Supreme Court in Leon modified the Fourth Amendment exclusionary rule so as not to bar the use of evidence in the prosecution's case in chief where the officers acted in reasonable reliance on a search warrant issued by a detached and neutral magistrate. In determining whether the good faith exception should be applied, "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." Id. 468 U.S. at 922 n.23.

In United States v. Diaz, 841 F.2d 1 (1st Cir. 1988), the court found the search warrant overbroad and lacking particularity, and unsupported by probable cause of some items. The court ordered the suppression of the documents unsupported by probable cause. However, even though the warrant was overbroad, suppression of other documents was not required because it was not so facially deficient that the agent could not have reasonably and in good

faith believed it was adequately authorized. "Seizing business records in a fraud investigation presents special problems for investigators attempting to draft warrants. Especially difficult is the case where the files contain a mixture of 'bad' material and 'innocent' material." Id. at 6. The court found that this was a case where it was virtually impossible to limit the warrant any further.

In United States v. Stubbs, 873 F.2d 210 (9th Cir. 1989), the court held that evidence must be suppressed where the warrant was impermissibly overbroad and there was not probable cause for IRS agents to seize all the documents in a real estate office. "The good faith exception is not available where the executing officer simply could not have reasonably relied on a facially deficient warrant." Id. at 212. The good faith exception grounded in an objective standard of reasonableness will not be applied "unless the officers executing search warrants, at the very minimum, act within the scope of the warrants and abide by their terms. United States v. Fuccillo, 808 F.2d 173 (1st Cir. 1987).

In this case, the good faith exception should not be applied. The law enforcement authorities, for the reasons described above, had available much more information with which they could have narrowed the scope of the affidavit and warrant, in terms of time, place, customer files, accounts, documents, and other generic classifications. A general rummaging of the offices of FCFCU and CSO was simply not necessary here and objective good faith is lacking.

Conclusion

For the reasons expressed, we respectfully request an Order of this Court suppressing the documents and tangible things, and other fruits of the search and seizure on November 4, 1988, as well as the fruits of the grand jury subpoena issued on November 14, 1988.

Respectfully submitted,

LAWRENCE E. KING, Defendant

By Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Brief in Support of Motion to Suppress was served by depositing in the U.S. Mail, postage prepaid on this 6 day of April, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101; Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114 and to Alan Stoler, 1004 Historic Library Plaza, Omaha, NE 68102.

Steve Achelpohl

Steven E. Achelpohl
Marilyn N. Abbott

SCHUMACHER & ACHELPOHL
ATTORNEYS AT LAW
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INCLUDING PROFESSIONAL CORPORATIONS
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1823 HARNEY STREET
OMAHA, NEBRASKA 68102-1908

JAMES R. SCHUMACHER, P.C.
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JOHN W. STEELE
STEPHANIE WEBER MILONE

TELEPHONE:
(402) 346-9000
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April 6, 1990

The Honorable Richard G. Kopf
U.S. District Court
Ed Zorinsky Federal Building
17th & Capitol Building
Omaha, NE 68101

APR 0 6. 90
U.S. ATTORNEY
OMAHA

b6
b7C

RE: U.S. v. [redacted] CR89-0-63

Dear Judge Kopf:

Enclosed please find a copy of the following Motions and an original and one copy of each brief submitted.

1. The Defendant's Motion to Suppress;

2. The Defendant's Brief in Support of Motion to Suppress;

3. The Defendant's Second Motion for Production of Exculpatory Evidence under Brady v. Maryland and Motion to Set Date Certain for Production of All Brady Material and Memorandum in support thereof;

4. The Defendant's Motion to Suppress Statements;

5. The Defendant's Motion in Limine; and

6. The Defendant's Brief in Support of Motion in Limine.

The original Motions have been filed with the Clerk. Thank you.

Very truly yours,

[redacted]

For the firm

147A-571-693

SEA:dw
Enclosures
cc: [redacted]

K/Kopf

SEARCHED
SERIALIZED
INDEXED
FILED

[redacted]

7-18

REPORT of the

FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

April 13, 1990

To: SAC, Omaha (147A-571)

[redacted]; b6 b7C
ET AL;
FRANKLIN COMMUNITY FEDERAL CREDIT
UNION (FCFCU);
ET AL;
FAG - HUD - IRS;
BF&E; WF; MF

FBI FILE NO. 147-28290

LAB. NO. 00301045 D XH

Re:

OO: Omaha

Examination requested by: Addressee

Reference: Communication dated February 20, 1990

Examination requested: Document

Specimens received March 1, 1990

Specimens:

K5 Three handwriting specimen forms and four sheets of paper bearing known handwriting of [redacted]

K6 Three handwriting specimen forms and five sheets of paper bearing known handwriting of [redacted]

Result of examination:

This report confirms and supplements information telephonically furnished to Special Agent [redacted] Omaha Division, on April 9, 1990.

It was determined that the [redacted] signatures appearing upon specimens Q1, Q2 and Q6 (previously submitted), were prepared by [redacted] K6 writer.

No examination was conducted with the known exemplars of [redacted] designated K5, due to the lack of comparable questioned signatures.

Specimens K5 and K6 are returned herewith. Photographs are retained in the Laboratory.

Enclosures (2)

FBI/DOJ

147A-571-699

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

LAWRENCE E. KING, JR., and ALICE P. KING,

Defendant(s).

CR89-0-63

MEMORANDUM AND ORDER

This matter came on for a status conference on April 20, 1990.

Upon advice received from counsel,

IT IS ORDERED that:

1. The defendant Alice P. King's motion to join (filing 255) is granted and she may join in the motions of the defendant Lawrence King, Jr. as indicated in said motion;

2. Filing 245, Mr. King's motion to suppress is scheduled for evidentiary hearing at 9:00 a.m. on May 11, 1990, before the undersigned;

3. Filing 248, the motion for production, and filing 253, the motion to dismiss, both filed by Mr. King, are scheduled for oral argument and evidentiary hearing before the undersigned at 1:30 p.m., May 8, 1990;

4. The government shall serve its brief on the motion to suppress by May 4, 1990, and the government shall serve its brief on the motion for production and the motion to dismiss on May 2, 1990;

5. The other remaining motions presently filed by the defendant King but not yet determined are the motion in limine (filing 176), the motion to suppress statements (filing 246), the

motion in limine (filing 247) and the possible future motions mentioned in the notice (filing 254). These motions are held in abeyance until Mr. King is able to appear and participate in an evidentiary hearing with respect to such motions, it being understood that counsel for Mr. King shall notify the undersigned within ten (10) days of the date of this order if any motions presently filed or which may be filed in the future can be taken up without the personal presence of Mr. King;

6. With regard to the notice regarding future motions (filing 254) counsel for Mr. King shall file all such contemplated motions which can be filed without the participation of Mr. King within ten (10) days of the date of this order;

7. To the extent that standing is an issue with respect to the motion to suppress (filing 245) the parties will either stipulate to the facts or submit the matter, reserving the issue of standing for later resolution until Mr. King can be present to participate in an evidentiary hearing regarding standing.

DATED this 23rd day of April, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

283

COPY

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	Case Number: CR89-0-63
Plaintiff,	)	
vs.	)	MOTION OF DEFENDANT ALICE KING TO WITHDRAW MOTION FOR PRODUCTION
ALICE PLOCHE KING,	)	
Defendant.	)	

COMES NOW the Defendant, Alice Ploche King, by and through her attorney, Jerold V. Fennell, and requests the Court to permit her to withdraw her previously filed Motion for production of attorney's files held by the Court, Filing No. 158, subject to said Motion being granted without prejudice toward its being refiled at a later date.

ALICE PLOCHE KING, Defendant

By Jerold V. Fennell

Jerold V. Fennell #11266
Suite 270 Regency Court
120 Regency Parkway
Omaha, NE 68114
(402) 393-1286
Attorney for Defendant

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing Motion was served upon Steven Achelpohl, Attorney at Law, 100 Historic Library Plaza, 1832 Harney Street, Omaha, Nebraska 68102, Assistant U.S. Attorney Thomas D. Thalken, P.O. Box 1228 DTS, Omaha, Nebraska 68101 and Alan G. Stoler, Attorney at Law, 1823 Harney Street, Suite 1004, Omaha, Nebraska 68102, by U.S. mail, postage prepaid, on the 23rd day of April, 1990.

Jerold V. Fennell

PETER, PETER & FENNELL
ATTORNEYS AT LAW

William F. Peter
Jerold V. Fennell
Michael A. Smith
William A. Peter (Dec'd)
Carl J. Peter (Dec'd)

April 23, 1990

Suite 270 Regency Court
120 Regency Parkway
Omaha, Nebraska 68114
Telephone: 402/393-1286

Magistrate Richard G. Kopf
Post Office Box 457
Omaha, Nebraska 68101

Re: United States of America
vs.
[redacted]
Case No. CR89-0-63

b6
b7C

Dear Judge Kopf:

I have filed this date a Motion seeking to withdraw my previous Motion to Produce the Erickson & Sederstrom records, which are currently in your possession. This, of course, refers to Filing No. 158. As was discussed at the hearing on [redacted] Motion for Severence on April 19th, 1990, this act is being taken so as to clear the board for your determination of her request for severence.

If the codefendant, [redacted] is later determined to be competent to stand trial, then I intend to renew my Motion for production of those files. As I see it, if Mr. [redacted] is judged to be competent, my client will have an absolute right to inspection of those files. If Mr. [redacted] does have a legitimate right to suppress all or selected parts of the files because of self-incriminating statements contained therein, then the only resolution to that conflict will be separate trials for Mr. and Mrs. [redacted]

I want to make sure there is a record of my client's position in this matter as to why she is willing to withdraw her Motion for Production of the Erickson & Sederstrom records. Her only motive is to obtain an early trial. I have advised her that proceeding to trial without benefit of the Erickson & Sederstrom records might be prejudicial. Of course, since I have never seen those records, I'm just not sure if any of those documents will be of assistance to my client. My client has simply balanced the possible good to come from those records against her desire to complete this unfortunate matter as soon

as possible. If trial is going to be delayed until Mr. [redacted] is competent, then we will most certainly want a full opportunity to review the Erickson & Sederstrom records and to utilize any of the contents in [redacted] defense. b6 b7C

Very truly,

[redacted]

JVF:d
cc: [redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR, AND ALICE PLOCHE KING, Defendants.	)	CR 89-0-63 MEMORANDUM AND ORDER

IT IS ORDERED that:

1. The motions for a bill of particulars (Filings 166 and 177) are denied except as provided herein, to wit: to the extent not now stated in the superseding indictment, the government shall provide the defendants and file with the clerk a bill of particulars by May 7, 1990, if the government has knowledge of the particulars, or through the exercise of reasonable diligence can obtain such knowledge, stating with as much specificity as is reasonably possible, the following: (a) the government shall name all known conspirators; (b) the government shall specify the date each defendant joined the conspiracy, the act which the government contends evidences joinder in the conspiracy, the location where that act took place, and the name of any conspirator who was present on the date that act took place; (c) for each overt act alleged in Count 1 (paragraphs E 1 through and including E 18 (including Counts 2 through and including 40 if these counts are also incorporated by reference in Count 1 as overt acts)) the date the overt act occurred, the name of the conspirator who actually did the act or directed that it take place, the location where the overt act took place, and the names of any conspirator who was

present on the date that act took place;

2. The motions (filings 151 and 153) seeking the issuance of subpoenas duces tecum as to Tom Harvey and Mary Jane Harvey are granted as provided herein: (a) the clerk of the court shall issue the subpoenas as requested except that the party subject to the subpoena need not produce any plea agreements or presentence reports and (b) the place of production shall be as jointly agreed by and between counsel for Mr. King and the Government, and (c) the date of production shall be as jointly agreed by and between counsel for Mr. King and the Government, but no later than 21 calendar days prior to trial and no earlier than May 1, 1990;

3. The motions (filings 152, 154 and 155) seeking the issuance of subpoenas duces tecum as to Eric Anderson, Cindy Harvey and Billy Harvey are denied, without prejudice, because it appears that at this stage of the proceedings the motions are intended as a general fishing expedition and the descriptions of the documents sought are overbroad;

4. As suggested by the American Bar Association's Criminal Justice Mental Health Standards, Standard 7-4.12, motions and discovery responses which may fairly be conducted without the personal participation of Mr. King shall be submitted forthwith, and accordingly: (a) the motions for extension of time (filings 180 and 200) are granted in part and denied in part in conformity with this order; (b) within 10 days counsel for Mr. King shall file a notice listing all motions, notices required by the Federal Rules of Criminal Procedure, such as a Rule 12.2 notice, or discovery

responses which cannot be filed because they require in the opinion of counsel the personal participation of Mr. King; (c) otherwise, within 10 days counsel for Mr. King shall file all motions or discovery responses which can be filed because they do not require in the opinion of counsel the personal participation of Mr. King;[1]

5. If Mrs. King has not already done so, she should file within 10 days any pretrial motions she intends to file.

DATED this 22nd day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

[1]Proceedings that might validly be permitted without the participation of Mr. King include motions to suppress or dismiss which do not require the testimony of Mr. King to resolve factual issues, but are essentially predicated on legal grounds alone. Other motions which might validly proceed are discovery related motions in which the testimony of Mr. King is not necessary.

UNITED STATES DISTRICT COURT
District of Nebraska
Post Office Box 1076
Omaha, Nebraska 68101

William G. Cambridge
District Judge

April 20, 1990

Pretrial Services Division
United States Probation Office
P.O. Box 1516 - DTS
Omaha, NE 68101

[redacted]

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Schumacher & Achelpohl
1823 Harney Street, Suite 100
Omaha, NE 68102-1908

United States Attorney's Office
P.O. Box 1228 - DTS
Omaha, NE 68101

Re: United States v. [redacted]
CR 89-0-63

Dear Ms [redacted] and Gentlemen:

Attached for you information and action is a copy of a letter which I received from the Federal Medical Center at Rochester, Minnesota, in connection with Mr. [redacted] evaluation. Upon the assumption that you have no objections thereto, you are hereby directed to forward forthwith to that center the information requested in the next to the last paragraph of the letter. If you do have any objections, please let me know.

Very truly yours,

[redacted]

Attachment

147A-571-698

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR., Defendant.	)	CR 89-0-63 MAGISTRATE'S FINDINGS AND RECOMMENDATIONS AND ORDER

This matter came on for hearing this 30th day of March, 1990. Mr. King was present in person and represented by his court appointed counsel. The government was present through its attorneys. The matter before the Court was a competency hearing held pursuant to 18 U.S.C. §§ 4241(a)&(d) and 4247(d) to determine the defendant's competency to stand trial.

I. Findings of Fact.

I find as fact for the purposes of the competency hearing held on March 30th, 1990 that:

1. Mr. King does not object to the admission of Dr. Dysart's report (sealed filing 197) into evidence for the purpose of the determination of competence only, and the Court receives such document in evidence;

2. Mr. King has elected to waive his right to cross-examine Dr. Dysart or adduce further evidence at the competence hearing, and Mr. King states that he has made this election in order to preserve the attorney-client privilege and the relationship he has with his attorneys;

3. Mr. King believes that he is competent to stand trial;

4. The Court received into evidence the summary of the Modlin report (sealed filing 204) and the transcript of the interview with Dr. Dysart, including the psychological test report of Dr. Lypson (sealed filing 203) as evidence of facts or data made available to Dr. Dysart pursuant to Federal Rule of Evidence 703;

5. Mr. King does not object to the receipt as evidence of the summary of the Modlin report (sealed filing 204) and the transcript of the interview with Dr. Dysart, including the psychological test report of Dr. Lypson (sealed filing 203) for consideration pursuant to Federal Rule of Evidence 703:

6. Dr. Dysart, a board certified psychiatrist, who is Chief of Psychiatry at the Medical Center for Federal Prisoners, at Springfield, Missouri, is of the following opinions:

a. Mr. King is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that, although he is able to understand the nature and consequences of the proceedings against him, he is unable to assist properly in his defense (sealed filing 197, at page 5, Opinion);

b. The probable primary diagnosis is: Delusional (paranoid) disorder, grandiose type (sealed filing 197, at page 5, Diagnostic Impression, Axis I);

c. During prolonged interviews of Mr. King and during prolonged questioning of Mr. King, the intellectual support of the grandiosity and expansiveness deteriorates and there is disorganization of thought processing which gravely impairs Mr. King's abilities to testify, consult with counsel, or withstand a

lengthy trial (sealed filing 197, at page 5, Conclusion, and sealed filing 203, at 12:16-25; 13: 1-25; 14:1-25; 15:1-16);

7. The various reports and transcripts should not be unsealed (flings 164, 197, 203 and 204) for the reason that it would be medically inadvisable to do so (sealed filing 203, at 36:15-25; 37: 1-7);

8. This case, involving as it does 40 criminal counts, is complex, and is likely to produce a lengthy trial;

9. As a matter of fact, by the preponderance of the evidence, Mr. King is incompetent to stand trial within the meaning of 18 U.S.C. § 4241 (d) in that he is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense because during prolonged interviews of Mr. King and during prolonged questioning of Mr. King, the intellectual support of the grandiosity and expansiveness deteriorates and there is disorganization of thought processing which gravely impairs Mr. King's abilities to testify, consult with counsel, or withstand a lengthy trial (sealed filing 197, at page 5, Conclusion, and sealed filing 203, at 12:16-25; 13: 1-25; 14:1-25; 15:1-16);

10. Except for the statement of Mr. King that he is competent, there is no evidence which contradicts the findings of fact set forth in paragraph 9.

II. Conclusions of Law.

As a matter of law, by the preponderance of the evidence, Mr. King is incompetent to stand trial within the meaning of 18 U.S.C.

§ 4241 (d) in that he is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense because during prolonged interviews of Mr. King and during prolonged questioning of Mr. King, the intellectual support of the grandiosity and expansiveness deteriorates and there is disorganization of thought processing which gravely impairs Mr. King's abilities to testify, consult with counsel, or withstand a lengthy trial (sealed filing 197, at page 5, Conclusion, and sealed filing 203, at 12:16-25; 13: 1-25; 14:1-25; 15:1-16).

IT IS RECOMMENDED to Judge Cambridge that an order be entered providing that:

1. Mr. King is hereby committed to the Attorney General who shall hospitalize him for treatment in a suitable facility for a period not exceed that provided for in 18 U.S.C. § 4241 (d)(1)&(2), with a report to be provided the Court within four months as to whether there is a substantial probability that in the forseeable future Mr. King will attain the capacity to permit the trial to proceed;

2. The United States Marshal shall forthwith, without delay, transport the defendant to such suitable facility;

3. It is recommended that the Attorney General place Mr. King at the United States Medical Center for Federal Prisoners at Rochester, Minnesota;

4. It is recommended that whatever suitable facility Mr. King is placed at should contact and consult with, among others, Dr.

Stanley Moore, M.D., 6901 N. 72, Omaha, Nebraska, 68122 (telephone: 402/572-2916) as to the appropriate treatment of Mr. King;

5. Whatever suitable facility Mr. King is placed at shall be provided by the Clerk of this Court with the report of Dr. Dysart (sealed filing 197), the transcript of the interview with Dr. Dysart, including the psychological test report of Dr. Lypson (sealed filing 203), and the summary of Dr. Modlin's report (sealed filing 204), but such suitable facility shall not disclose such documents to the public and such documents shall remain sealed.

IT IS ORDERED that, pursuant to Local Rule of Practice 49 B and with the agreement of counsel for the parties, any objection to the Findings and Recommendations shall be filed with the Clerk of the Court, and a supporting brief delivered to Judge Cambridge, on or before Monday, April 2, 1990, at the close of Court business.

DATED this 30th day of March, 1990.

BY THE COURT:

RICHARD G. KOPF
U.S. MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. ALICE PLOCHE KING, Defendant.	)	CR. 89-0-63 MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SEVER

By motion dated April 5, 1990, defendant Alice P. King moved for severance from defendant Lawrence E. King on the ground of prejudicial delay. In her brief, defendant relies on her right to a speedy trial, and asserts that she has been and will be prejudiced by delay if her trial is continued pending a determination of the competency of her co-defendant. Neither the grounds asserted nor any other sustainable grounds warrant the relief requested. Joinder of these two defendants is proper and has not been contested. Severance is not warranted since no prejudice has been shown. All delay has been reasonable and properly excludable.

The superseding indictment filed May 19, 1989, charges the defendant and her husband with conspiracy and with substantive offenses in connection with the Franklin Community Federal Credit Union. Fed.R.Crim.P. 8 permits joinder of offenses when the offenses "are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting part of a common scheme or plan." Fed.R.Crim.P. 8(b) permits joinder of two defendants

if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. It further provides that each count need not charge all defendants. Here, both defendants are named in Count 1, the conspiracy count, in Counts 26 through 34, and in Counts 39 and 40. The evidence to be adduced against each defendant regarding the existence of the conspiracy and with regard to many of the overt acts and substantive offenses will be identical. Defendant has not challenged the joinder, and it is proper.

Where joinder is proper, severance will be granted only upon a showing of substantial prejudice, United States v. Werner, 620 F.2d 922 (2d Cir. 1980), since "any lesser showing would undermine the policies behind Rule 8." F.R.Crim.P, Id. at 929. the Eighth Circuit has noted that severance is permitted "to avoid undue prejudice" and denial will be reversed "only upon a finding of clear prejudice and abuse of discretion." United States v. McClintic, 570 F.2d 685, 689 (8th Cir. 1978) [emphasis added]. Generally, persons indicted together should be tried together. United States v. Phillips, 607 F.2d 808 (8th Cir. 1979). There is a substantial public interest in joint trials since this expedites "the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries, and avoids the necessity of recalling witnesses who would otherwise be called upon to testify only once." Parker v. United

States, 404 F.2d 1193, 1196 (9th Cir. 1968), cert. denied, 394 U.S. 1004 (1969). Thus, the burden is on defendant to demonstrate that severance should be granted, as the law prefers joinder. This, she has not done.

Defendant's alleged "prejudice" is her anxiety over being named a defendant, and potential memory loss by unspecified witnesses of unidentified exculpatory events. This is inadequate. As the Eighth Circuit stated in United States v. Boyd, 610 F.2d 521 (8th Cir.), cert. denied, 444 U.S. 1089 (1980), a defendant "must affirmatively demonstrate the joint trial prejudices his right to a fair trial," 610 F.2d at 525, for denial of severance to be reversed. The court went on to note that even where there is real conflict between defense theories, continued joinder will be proper. This confirms the importance given to joint trial of co-defendants. The cases defendant cites also confirm this. In United States v. Rush, 738 F.2d 497 (1st Cir. 1984), defendants alleged actual prejudice with regard to conflicting theories of defense. Despite differences among the defendants, the court found no prejudice and denial of severance was proper.

Further, under the provisions of Title 18, United States Code, Section 3161 and Fed.R.Crim.P. 50(b), all delay to date and including future delay to determine the competency of co-defendant Lawrence E. King is reasonable and excludable. All delay to date has been joined in by this defendant. On June 13, 1989, defendant Alice P. King requested continuance and knowingly waived her right to a trial date through December 1, 1989. Then

again on September 14, 1989, Mrs. King further requested additional time and knowingly waived her right to a trial through April 1, 1990. Thus, all delay to date has been delay in which this defendant has expressly joined.

Delay necessitated in order to bring a co-defendant to trial is also reasonable, proper, and excludable. 18 U.S.C. §3161(h)(7); United States v. Dennis, 737 F.2d 617 (7th Cir. 1984). The Eighth Circuit has called this provision "crucial in a case involving multiple defendants because it provides that an exclusion applicable to one defendant applies to all defendants." United States v. Fogarty, 692 F.2d 542 (8th Cir. 1982), cert. denied, 460 U.S. 1040 (1983)[citations omitted]. Here, a finding on the co-defendant's ability to stand trial will be presented no later than August, 1990. Given the substantial interest in trying co-defendants together, particularly where there is extensive evidence and numerous witnesses, who would be burdened by double trials, this period of delay is both proper and reasonable, and is excludable under the law. In Barker v. Wingo, 407 U.S. 514 (1972), the Court approved a five-year delay of Barker to allow trial of his co-defendant, even though "Barker was prejudiced to some extent by living for over four years under a cloud of suspicion and anxiety." 407 U.S. at 534. Here, a delay of five months is authorized by all applicable authority, and defendant's motion should be denied.

The joinder of these defendants is proper and has not been challenged. In such a case, severance is discretionary and

requires a balancing of the government's interest in orderly prosecution and presentation of voluminous evidence only once against the defendant's interest in a speedy trial. Under the Speedy Trial Act and under relevant court opinions, all delays have been reasonable. Finally, defendant has shown no prejudice from continuance of her trial until both defendants can be tried together. Should such prejudice develop, or should the delay approach being unreasonable, the court may make such orders at that time as it deems reasonable. At this time, the only reasonable order is one denying defendant's motion to sever.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney

By: THOMAS D. THALKEN
First Assistant U.S. Attorney

And: JOEN GRANT
Assistant U.S. Attorney
P.O. Box 1228-DTS
Omaha, Nebraska 68101
(402) 221-4774

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by hand delivery this 19th day of April, 1990:

Steven E. Achepohl
Attorney at Law
100 Historic Library Plaza
1823 Harney Street
Omaha, Nebraska 68102

Jerold V. Fennell
Attorney at Law
Suite 225, Regency Court
120 Regency Parkway Drive
Omaha, Nebraska 68114

First Assistant U.S. Attorney

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DE FBIMM #0013 1222113

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FM FBI MIAMI (147A-1762) (LIAISON OFFICE)

TO DIRECTOR FBI/PRIORITY/

FBI OMAHA/PRIORITY/

BT

UNCLAS

CITE: //3460//

147A-571

SUBJECT: [redacted] PRESIDENT, FRANKLIN COMMUNITY FEDERAL CREDIT UNION, OMAHA, NEBRASKA, ET AL; FAG - HUD; IRS TAXES; MF; WF; BF AND E; OO: OMAHA.

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CONTACT HAS BEEN MADE WITH [redacted] IS CURRENTLY IN NEW ZEALAND AND WILL RETURN MID-MAY, 1990. [redacted] WERE NOT SUCCESSFULLY CONTACTED. BOTH MEN CONTACTED DECLINED TO TRAVEL TO THE UNITED STATES FOR THE PURPOSE OF TESTIFYING AGAINST SUBJECTS. [redacted] AND THE ENTIRE PROCESS WAS VI TAPED FOR COURT ROOM USE. THE INTERVIEWS WERE ALSO CONDUCTED WITH AN OPEN TELEPHONE LINE WHICH ALLOWED THE DEFENDANT TO HEAR THE ENTIRE PROCESS. THIS WAS DONE UNDER COURT ORDER AND APPROVAL BY THE UNITED STATES DISTRICT COURT JUDGE.

147A-571-703

SEARCHED [redacted] INDEXED [redacted]
SERIALIZED [redacted] FILED [redacted]
MAY 02 1990

IF OMAHA WISHES TO PURSUE THIS, THE NORTHERN CARIBBEAN LIAISON OFFICE WILL FACILITATE THE REQUEST.

[redacted]

BT

#0013

PROB 2
(Rev. 4/84)

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

PRESENTENCE REPORT

NAME (Last, First, Middle)					DICTATION DATE
MURRAY, Larry J.					April 5, 1990
ADDRESS			LEGAL RESIDENCE		SCHEDULED SENT. DATE
4545 North 40th Ave. Omaha, Nebraska 68111			Same		May 25, 1990 DOCKET NO. CR 89-O-64 CITIZENSHIP United States
AGE	RACE	DATE OF BIRTH	PLACE OF BIRTH	SEX	EDUCATION
40	Black	01/31/50	Omaha, NE	M	13 years
MARITAL STATUS			DEPENDENTS		SOC. SEC. NO.
Married			Three Children		508-64-7440
FBI NO.			U.S. MARSHAL NO.		OTHER IDENTIFYING NO.
921 50 G			12837-047		None

OFFENSE

Filing Fraudulent Tax Returns (1 Count) in violation of 26 U.S.C. 7206(1).

PENALTY

3 years imprisonment and/or $250,000 fine.

$50 Special Assessment.

CUSTODIAL STATUS	DATE OF ARREST
Personal Recognizance Bond on 05/22/89.	05/22/89

PLEA

Guilty to Count II on 02/23/90.

VERDICT

N/A

DETAINERS OR CHARGES PENDING

None.

OTHER DEFENDANTS

None.

ASSISTANT U.S. ATTORNEY	DEFENSE COUNSEL
Mr. Thomas D. Thalken, FAUSA	Mr. Brent Bloom 1510 Leavenworth Street Omaha, Nebraska 68102 (402) 342-2833

DISPOSITION

SENTENCING JUDGE	DATE	PROBATION OFFICER
Honorable Lyle E. Strom, Chief Judge		Victor W. Walker

MURRAY, Larry J.

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. A two count sealed Indictment was filed May 9, 1989, charging Larry J. Murray, the defendant in both counts with violation of 26 U.S.C. 7206(1) that is, Filing Fraudulent Tax Returns. On May 22, 1989, Mr. Murray voluntarily appeared along with privately retained counsel at which time he entered a plea of not guilty as to both counts. On February 23, 1990, Mr. Murray appeared along with privately retained counsel at which time he entered a plea of guilty as to Count II with a plea bargain calling for the dismissal of Count I at time of sentencing. In return Mr. Murray agreed to cooperate with the Government and the Government will make known his cooperation prior to sentencing. Further, the plea agreement includes a stipulation by the Government that Mr. Murray should receive a two level decrease for acceptance of responsibility. The defendant by stipulation in the plea agreement agrees that for purposes of computing the sentencing guideline range the tax loss both under Count I and II of the Indictment will be considered "relevant conduct". Mr. Murray has been continued on a Personal Recognizance Bond since his initial appearance on May 22, 1989.

Related Cases

2. None.

The Offense Conduct

3. The Court will find attached a memorandum prepared by First Assistant United States Attorney, Thomas D. Thalken, dated February 20, 1990, which includes a four page Prosecutor's Version.

4. The Court will find attached correspondence from defense counsel, Brent M. Bloom, dated February 21, 1990, which is intended to be submitted as the defendant's statement of the offense.

Victim Impact

5. The defendant evaded $19,158.67 in Income Tax as a result of his involvement in instant offense.

MURRAY, Larry J.

Offense Level Computation

6. Base Offense Level: The guideline for 26 U.S.C. 7206(1) is found in Section 2T1.3(a)(1) of the sentencing guidelines. The Base Offense Level for income tax evaded in the amount of $19,158.67 is 9. 9

7. Specific Offense Characteristics: 0

8. Victim Related Adjustment: None. 0

9. Adjustment for Role in the Offense: None. 0

10. Adjustment for Obstruction of Justice: None. 0

11. Adjustment for Acceptance of Responsibility: Mr. Murray has clearly demonstrated acceptance of responsibility by acknowledging wrong doing. -2

12. Total Offense Level: 7

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

	Date of Arrest	Charge/Agency	Date Sentence Imposed/ Disposition	Guideline/ Score
13.	07/02/67	Truancy, Juvenile Court, Omaha, NE.	90 days at the Youth Development Center, Kearney, NE.	4A1.2(c) 4A1.2(e) 0

Criminal Convictions

	Date of Arrest	Charge/Agency	Date Sentence Imposed/ Disposition	Guideline/ Score
14.	09/07/68	Petty Larceny, County Court, Omaha, NE.	$50 fine.	4A1.2(e) 0
15.	10/19/69	Second Offense Petty Larceny; County Court, Omaha, NE.	30 days imposed 10/19/69.	4A1.2(e) 0

MURRAY, Larry J.

16.	12/17/69	Robbery; Nebraska District Court, Omaha, NE.	3 to 7 years imprisonment pronounced February 3, 1970	3

The defendant was released on parole June 28, 1972 and satisfactorily discharged from parole December 28, 1972.

*In assessing three points, in the Criminal History Category, it is understood that the 15 year exclusion rule expired with regard to the count of conviction. However, the defendant stipulated to offense conduct in Count I which occurred on April 14, 1987. The stipulated offense behavior in Count I therefore occurred 14 years and 10 months subsequent to the day of release from incarceration from the Nebraska Penal and Correctional Complex (June 28, 1972). As the plea agreement stipulates in Paragraph 2, that for the purposes of computing the sentencing guideline range on Count I shall be the total of tax losses under both counts I and II under the provisions of Section 1B1.3 "relevant conduct" of the sentencing guidelines, the offense conduct therefore is established to have begun at the date referenced in Count I (April 14, 1987).

Mr. Murray acknowledged that he was represented by counsel.

Criminal History Computation

17. Mr. Murray receives three Criminal History Points which places him in a Criminal History Category of II.

Other Criminal Conduct

18. None.

PART C. SENTENCING OPTIONS

Custody

19. Statutory Provisions: The maximum term of imprisonment in this case is three years.

20. Guideline Provisions: Based on a Total Offense Level of 7 and a Criminal History Category of II the guideline range is 2-8 months.

Supervised Release

21. Statutory Provisions: If a term of imprisonment is imposed, the Court may impose a term of Supervised Release of 1 year

in that Mr. Murray is convicted of a Class E Felony.

22. Guideline Provisions: If a sentence of imprisonment of more than one year is imposed on a Class E Felony a period of Supervised Release of not more than one year may be imposed.

Probation

23. Statutory Provisions: The defendant is eligible for probation by statute. The range may be from one year to five years.

24. Guideline Provisions: The defendant is eligible for probation within the guidelines as long as the Court requires intermittent confinement of at least 1/2 of the minimum term.

PART D. OFFENDER CHARACTERISTICS

Family Ties, Family Responsibilities and Community Ties

25. Larry J. Murray was born January 31, 1950, in Omaha, Nebraska. He was the fifth of nine children born to the union of Ray Murray and Mary (nee: Jones) Murray. The defendant was raised under impoverished conditions and experienced some family discord. As a youth he was admitted to the Youth Development Center, Kearney for status offenses (truancy). He has for the most part always resided in the Omaha area. He considers his family relationships presently to be good.

26. The defendant married Jo Baker on June 1, 1988, in Omaha, Nebraska. There have been two children born of this relationship; LaRecia (daughter) age 7, and Larry, Jr. (age 6 months). There is an additional child Yananta, age 11 residing in the home. She is the product of the defendant's wife's previous marriage. The defendant and his wife have lived together for approximately 13 years. An excellent relationship exists between the immediate family members.

Education and Vocational Skills

27. The defendant was graduated from Technical High School in May of 1968. Records from Omaha Tech High School reflect that he was well above average in his academic standing; though he experienced some difficulties with attendance. The defendant's deportment while in school would be considered above average. Testing accomplished in December of 1964 reflects that the defendant has an average I.Q. Following graduation from high school the defendant attended Metro Tech Community College for a period of one year. His transcripts, however, are unavailable.

Employment Record

28. Since February 5, 1990, the defendant has been employed by R.T.I. (Records and Tapes, Inc.) as a salesman where he earns about $1,400 monthly (verified).

29. From September, 1984, until November 4, 1988, the defendant was employed by the Franklin Community Federal Credit Union (under the employment name of Consumer Service Organization). He worked as a Development Officer where he earned approximately $3,650 per month (net).

30. From June, 1984, until August, 1985, the defendant was employed by Tandy Radio Shack of Omaha as a Manager where he earned approximately $1,700 per month.

31. From June, 1980, until July, 1983, the defendant was employed by Coleman Construction Company as a Purchaser where he earned approximately $1,000 per month.

32. From June, 1977, until June, 1980, the defendant was employed by Hinky Dinky as a Grocery Manager earning about $1,440 per month.

33. From November, 1974, until June, 1977, the defendant was employed as a Retail Sales Manager for Marge Muffler of Omaha earning approximately $800 monthly as a Retail Sales Manager.

Physical Condition

34. The defendant is 6' tall, weighs 175 pounds with brown eyes and black hair. He considers himself to be in good physical condition.

Mental and Emotional Health, Including Drug Dependence and Alcohol Abuse

35. The defendant denies the use of drugs. He reports that he has never smoked marihuana and experiences no alcohol related problems.

PART E. FINES AND RESTITUTION

Statutory Provisions

36. Mr. Murray subject to a maximum fine of $250,000.

MURRAY, Larry J.

Guideline Provisions for Fines

37. The guideline provisions provide that Mr. Murray pay a fine of between $19,158.67 and $57,476.00.

Defendant's Ability to Pay

38. Mr. Murray reported the following financial statement:

Bank Accounts Northwest Bank (checking) balance	$ 350
Securities - Stocks fair market value	112

Real Estate	Value	Owes	Monthly Payment
4545 N. 40th Ave.	$ 36,500	$15,000	$300
4001 N. 42nd St.	16,500	-0-	-0-
3402 Belvedere Blvd.	27,000	20,000	325
4752 N. 41st St.	14,500	-0-	-0-
Motor Vehicle			
1988 Chevy Astro	9,000	-0-	-0-
Other Assets			
1968 Malun Bass Boat	800	-0-	-0-
Charge Accounts Liens and Credits			
Revolving Charge - Montgomery Wards	-0-	405	20
TOTAL	$104,762	$35,405	$645
Net Worth	$ 69,357		

Monthly Income

Net Salary	$1,400
Spouse's Salary	610
Net Rental Income	700
Total Income	$2,710

MURRAY, Larry J.

Total Necessary Expenses	$1,307
Monthly Cash Flow	1,403

PART F. FACTORS THAT MAY WARRANT DEPARTURE

38. None.

Respectfully submitted,

Victor W. Walker
U. S. Probation Officer

Reviewed and Approved by:

Date: 4-12-90

VWW:lb

BRENT M. BLOOM
ATTORNEY AT LAW

1510 LEAVENWORTH STREET
OMAHA, NEBRASKA 68102

TELEPHONE (402) 342-2833
FACSIMILE (402) 346-8037

February 21, 1990

Mr. [redacted]
U.S. Probation Office
United States Courthouse
17th & Capitol Streets
Omaha, Nebraska 68102

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RE: U.S. v. [redacted]
Case No. CR 89-0-64

Dear Mr. [redacted]

This letter will serve as the required defendant's statement of offense in the above-referenced matter.

Defendant [redacted] (hereinafter [redacted] was employed by the Franklin Community Federal Credit Union (hereinafter "FCFCU") from 1985 through November 4, 1988 as a development officer. His duties include soliciting sales of share certificates to individuals and organizations.

In addition to a base salary, [redacted] received a commission for the sale of each share certificate, based upon its value and term of investment. He submitted summaries of his certificate sales to the FCFCU accountant, [redacted] who would verify the sales and issue commission checks. The commission checks were issued without check stubs detailing withholding information. In addition, [redacted] was not provided with an IRS Form 1099 by FCFCU for any year.

Although [redacted] was aware of the reporting requirement for his commission income, he did not report these amounts for tax years 1986 and 1987 on his Form 1040, nor did he file Form 1099. On numerous occasions since 1985, [redacted] had requested the appropriate forms for reporting his commission income from FCFCU's accountant, both verbally and in writing. He was repeatedly told that FCFCU was responsible for the payment of taxes on commissions earned by development officers from the sale of stock certificates, and that he should not worry, as these matters were "taken care of." It is presumed that [redacted] was deliberately misinformed about his tax responsibility because FCFCU may have reported only a portion of the share certificate sales in its financial records. [redacted] was never aware of any illegal or improper diversion of funds.

[redacted] was aware that there was a potential problem concerning the commission income and discussed his tax situation with a professional tax preparer. However, he did not report the income on his personal tax returns because he believed that FCFCU paid taxes on his commissions.

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Throughout the investigation of this matter, including two interviews with federal agents on January 10, 1989 and February 14, 1989, [redacted] has been completely cooperative. He has never denied receiving the subject commission checks, nor has he been untruthful as to any matters involved in the investigation. From the outset, he has indicated a willingness to pay his outstanding tax liabilities.

If you have any questions about these matters, please do not hesitate to contact me.

Sincerely,

[redacted]

BMB/mk
cc: [redacted]
Asst. U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CR 89-0-63
	)	
	)	SECOND
Plaintiff,	)	SUPERCEDING
	)	INDICTMENT
	)	18 U.S.C. §371,
vs.	)	18 U.S.C. §657,
	)	18 U.S.C. §1006,
	)	18 U.S.C. §1341,
LAWRENCE E. KING, JR., and	)	18 U.S.C. §1343,
ALICE PLOCHE KING,	)	18 U.S.C. §1344,
	)	18 U.S.C. §2, and
	)	26 U.S.C. §7206(1)
Defendants.	)	

JUDGE CAMBRIDGE

The Grand Jury Charges:

COUNT 1

A. From on or about the 1st day of July, 1976 and continuing thereafter up to and including May 19, 1989, in the District of Nebraska and elsewhere, LAWRENCE E. KING, JR., and ALICE PLOCHE KING, the defendants herein, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree with Earl Thomas Harvey, Jr., Mary Jane Harvey and with other individuals both known and unknown to the Grand Jury to:

1. Defraud the United States by impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes; and

2. Defraud the United States by impeding, impairing, obstructing, and defeating the lawful government functions of the National Credit Union Administration (NCUA), an agency of the

United States, in the supervision, regulation, and insurance of deposits of federally insured credit unions; and

3. Commit the following offenses against the laws of the United States:

a) While being an officer or employee of a credit union whose accounts were insured by the Administrator and Board of the NCUA, to embezzle, abstract, purloin and willfully misapply moneys, funds, credits and securities of a credit union in violation of 18 U.S.C. §657; and

b) While being an officer or employee of a credit union whose accounts were insured by the Administrator and Board of the NCUA, to make false entries in the books, reports, and statements of said credit union with the intent to injure and defraud said credit union and to deceive the agents and examiners of NCUA in violation of 18 U.S.C. §1006; and

c) To knowingly and willfully 1) falsify, conceal, cover up by trick, scheme, and device material facts and 2) make false, fictitious and fraudulent statements and representations and 3) use false writings and documents containing false, fictitious and fraudulent statements and entries in matters within the jurisdiction of agencies and departments of the United States in violation of 18 U.S.C. §1001; and

d) To use the United States mails and interstate wire communications to execute a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises in violation of 18 U.S.C. §§1341 and 1343; and

e) To use fictitious, false, and assumed titles, names, and addresses other than their own proper names for the purpose of conducting, promoting, and carrying on by means of the U.S. Postal Service a scheme and artifice to defraud in violation of 18 U.S.C. §1342; and

f) On and after October 12, 1984, to execute and attempt to execute a scheme and artifice to defraud a federally insured financial institution and to obtain the moneys, funds, credits, assets and securities under the custody and control of said financial institution by means of false and fraudulent pretenses, representations, and promises in violation of 18 U.S.C. §1344; and

g) To prepare, file, falsely subscribe to, and present false and fraudulent federal tax returns in violation of 26 U.S.C §7206; and

h) On and after October 27, 1986, in an offense committed in the United States, to knowingly engage and attempt to engage in a monetary and financial transaction in criminally derived property in violation of 18 U.S.C. §§1956 and 1957; and

i) To present materially false testimony and documents while under oath before a federal grand jury in violation of 18 U.S.C. §1623.

B. At times material and relevant hereto:

1. The Franklin Community Federal Credit Union (FCFCU) was a federally insured credit union whose accounts were insured

by the Administrator and Board of the National Credit Union Administration, an agency of the United States. On November 4, 1988, FCFCU operated in offices located at 1723 North 33rd Street in Omaha, Nebraska, and at 2429 "M" Street, Omaha, Nebraska.

2. Consumer Services Organization, Inc. (CSO) was a corporation organized as a non-profit organization whose stated purpose was to provide consumer counseling and educational services. As such, CSO was a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. On November 4, 1988, CSO operated in offices located at 1723 North 33rd Street in Omaha, Nebraska, and at 2429 "M" Street in Omaha, Nebraska. CSO was organized to receive grants from governmental and charitable groups to fund consumer counseling and educational services and provide support for FCFCU by means of grants for operational expenses.

3. LAWRENCE E. KING, JR. (KING), a defendant herein, was the President of CSO and an officer and employee, that is Manager/Treasurer, of the FCFCU.

4. ALICE PLOCHE KING (MRS. KING), a defendant herein, was the wife of LAWRENCE E. KING, JR., and on November 4, 1988 resided with KING at 13232 North River Road, Omaha, Nebraska.

5. Earl Thomas Harvey, Jr. (Tom Harvey) was an employee of FCFCU and served as the head of accounting of FCFCU and CSO.

6. Mary Jane Harvey was the mother of Earl Thomas Harvey, Jr., and was a secretary and an Associate Executive Director for the Presbytery of Missouri River Valley, Presbyterian Church (U.S.A.), in Omaha, Nebraska and secretary/treasurer for CSO.

C. It was the object of the conspiracy that the co-conspirators would illegally obtain moneys and funds which were transmitted to the FCFCU for deposit and then use those moneys and funds for their own use.

D. It was part of the conspiracy that:

1. In 1976, Tom Harvey took over the accounting at FCFCU. At that time, accounting was performed manually with individual ledger cards for depositors. Tom Harvey observed an inactive account from a local religious organization that ceased operating and that organization apparently forgot about the deposit in FCFCU. Tom Harvey observed that funds from that account were used to pay some of KING's personal expenses. KING told Tom Harvey that it was a temporary situation and that the shortage would be restored when new grants came in to CSO. Other such accounts were noticed by Tom Harvey. When FCFCU converted the accounting operations to a magnetic posting machine, KING directed Tom Harvey as to which accounts were the "Special" accounts to be kept off the machine so that Tom Harvey could keep better track of the shortages. After that, Tom Harvey was to keep track of the shortages and pay the requests of KING whenever presented. By the end of 1976, the shortage was approximately $400,000.

2. After discovering the manipulation of FCFCU's accounts by KING, Tom Harvey commenced to, occasionally, pay his own utility bills and credit card billings through the "special" accounts.

3. In 1976, in order to prepare for an upcoming NCUA examination, KING and Harvey would meet after business hours. Tom Harvey would prepare fictitious ledger cards and KING would rub them on the carpet in his office in order to give them some "age" in order to deceive NCUA examiners. They would also prepare the accounts which were to be shown the examiners.

4. In 1978, credit unions were authorized to sell Certificates of Deposit (CD's) or share certificates for investment. With the sale of these CD's KING's appetite for personal funding increased and the shortages escalated.

5. KING, from time to time, assured Tom Harvey that the expenditures causing the shortages were for the successful total mission of the FCFCU and that they had to keep on doing what they were doing in manipulating the accounts. KING stated to Tom Harvey that grants from charitable organizations would be forthcoming and those amounts would be used to cover the shortages. Later, it was realized by both KING and Tom Harvey that no amount of grants would come to FCFCU or CSO that would cover the shortage. Consequently, the manipulation of the books and records of FCFCU became a permanent situation.

6. As the unauthorized expenditures increased, pressure was placed by KING for increased sales of CD's. Development Officers, or salesmen, were hired to market and sell CD's. KING and Tom Harvey authorized above the market interest rates for CD's in order to increase the sales of CD's.

7. In 1982, FCFCU converted its accounting operations to computer. Tom Harvey programmed the computer to create separate fields to handle the diversion of FCFCU funds. Ultimately, one account, No. 8888 (the 8's Account), in combination with others, was used as a clearinghouse, with few exceptions, for the diversion of funds. Tom Harvey maintained in the computer, and later in combination with another computer, computer fields to keep track of the CD's that were issued and active and protected by passwords known only to Tom Harvey. When called upon for financial statements and NCUA examination reports, Tom Harvey would selectively cull from the CD's those deposits that would support the financial statements or a listing of certain active CD's for NCUA examiners. Tom Harvey would also control the generation of statements to depositors so that their statements were accurate in order to avoid questions by depositors.

8. From time to time during the conspiracy KING would direct the payment of bills and invoices that he would incur for his personal use and for his personal businesses along with charging to FCFCU directly various personal and non-FCFCU expenses.

9. From time to time during the conspiracy MRS. KING would direct the transfer of money from FCFCU to her own personal banking accounts.

10. From time to time during the conspiracy KING would direct employees of FCFCU to provide him cash from FCFCU.

11. From time to time during the conspiracy, KING would carry briefcases of cash from the FCFCU on his travels and use the cash for his own personal use.

12. From time to time during the conspiracy, Tom Harvey would prepare false reports, including but not limited to NCUA Form 5300s (Statement of Financial Conditions), KING would sign them, and the reports would be presented to NCUA and other agencies.

13. From time to time during the conspiracy, KING would use FCFCU funds for expenses of some of his male friends, including but not limited to, automobile leases, apartment rentals, clothing, jewelry, furniture and travel expenses. On occasion, KING would also provide these friends with cash or credits at FCFCU.

14. From time to time and from FCFCU funds, Tom Harvey would provide his mother, Mary Jane Harvey, with funds transferred to her checking account along with the payment of some of her expenses to include credit card bills.

15. From time to time during the conspiracy, KING and MRS. KING would provide explanations of the source of the money used for personal expenditures as being that of gifts or inheritances from relatives or that of profits from their independent business concerns. In fact, no substantial gifts or inheritances from relatives existed. Furthermore, while several of the business concerns made negligible profits, their business concerns were generally operating at a loss. Consequently, from

time to time, KING would direct the infusion of FCFCU funds to keep these business concerns operating and further direct the payment of some of the business concerns' expenses with FCFCU funds.

16. During the period of 1984 through November 4, 1988, the conspirators embezzled and misapplied FCFCU funds in the following approximate amounts for the uses indicated:

KING family	- $10,223,217
KING businesses	- $ 1,901,653
Tom and Mary Jane Harvey	- $ 1,000,000

17. During the period of 1984 through November 4, 1988, in addition to the amounts set forth in subparagraph 16 above, the conspirators misapplied and falsely accounted for the following approximate amounts from FCFCU funds for the uses indicated:

FCFCU Expenses	- $ 2,070,864
CSO Expenses	- $ 1,997,232

18. During the period of the conspiracy, operating expenses involving salaries of FCFCU/CSO employees were paid from FCFCU funds in the approximate amount of $4,431,232 apart from the expenditures set forth in subparagraphs 16 and 17 above.

19. During 1987 and 1988, partly in order to maintain cash flow, securities held as investments by FCFCU were sold at losses in the approximate amount of $869,292.

20. During the period of the conspiracy, approximately $8,999,766 was paid to CD holders in redemption and interest

payments in order to maintain the appearance of regularity to FCFCU operations.

21. From time to time during the conspiracy, Tom Harvey would inform KING the approximate shortages in FCFCU funds.

22. From time to time, KING and Tom Harvey would meet and discuss ways and means to cover up or disguise their embezzlements of FCFCU funds and to prevent discovery by authorities.

23. During November 6-8, 1979, KING, Tom Harvey and Mary Jane Harvey travelled to Washington, D.C. to meet with the Administrator of NCUA. While in Washington, D.C., the co-conspirators solicited letters of support for FCFCU from their Congressmen and U.S. Senators. Such letters were then provided to NCUA by the co-conspirators in an effort to ease NCUA scrutiny of FCFCU's financial condition and books.

24. From time to time during the conspiracy various of the co-conspirators, in order to obtain investments of over $100,000, would inform CD investors that the excess over $100,000 would be covered by a pledge of collateral of securities when in fact no such pledge was intended or that such securities existed.

25. From time to time during the conspiracy, KING would sign and certify Statements of Financial Condition to be used by development officers (salesmen of CDs) in soliciting investments in FCFCU CD's. The amounts on these statements would differ although covering the same period in order to attract different types of investors. Said statements were false and misleading as to the true condition of FCFCU.

26. From time to time and after the closing of FCFCU by NCUA, KING and MRS. KING would provide false and misleading statements and testimony in order to cover up their involvement in this conspiracy and to preclude detection by authorities.

E. In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Nebraska and elsewhere.

1. On or about May 15, 1983 KING caused to be filed a signed 1982 CSO Form 990, Return of Organization Exempt from Income Tax.

2. On or about September 24, 1984 KING and Tom Harvey caused a verification to the National Credit Union Administration of a false FCFCU investment for $516,000, to wit: the non-existent Presbyterian Economic Development Corporation of Omaha.

3. On or about May 13, 1985 KING signed and caused to be filed a 1983 CSO Form 990, Return of Organization Exempt for Income Tax.

4. Several days prior to the NCUAs closing of FCFCU on November 4, 1988, and after a federal grand jury subpoena was served on Tom Harvey for development officer records of CD sales at FCFCU, KING met with Tom Harvey in Omaha, Nebraska, and discussed impending enforcement action against FCFCU whereupon KING requested that Tom Harvey solicit a named individual to "take the fall" for the shortages at FCFCU and that $100,000 be paid to that individual.

5. On November 6, 1988, Tom Harvey met with KING at his his residence on River Road in Omaha where KING requested Tom Harvey to "not get scared and crack" and to meet with KING's attorneys and not disclose the true amount missing. KING inquired of Tom Harvey if the authorities could figure out Tom Harvey's books at the FCFCU to which Tom Harvey replied that eventually authorities would be able to do so. KING told Tom Harvey that "as long as nobody cracks, we will get out of this thing."

6. On or about the following dates, KING's primarily personal credit card and travel related services billings were paid with funds of FCFCU by FCFCU checks in the following amounts:

	DATE	AMOUNT
a)	8/24/87	$124,401.97
b)	11/30/87	$120,269.23
c)	1/6/88	$106,146.81
d)	4/20/88	$122,009.43
e)	6/16/88	$120,201.30
f)	8/8/88	$138,862.79

7. On or about March 29, 1988 Tom Harvey submitted to IRS Special Agents NCUA Forms 5300, Statement of Financial Conditions for FCFCU for the periods ending 12/31/82, 12/31/83, 12/31/84, 12/31/85, 12/31/86 and 12/31/87 signed by Tom Harvey or KING.

8. On or about August 16, 1985, FCFCU mailed a letter to the Presentation Sisters in Aberdeen, South Dakota containing a purported pledge of securities and a CD for $1,000,000.

9. On or about May 13, 1988 Tom Harvey submitted to IRS Special Agents non-filed Forms 990 for CSO for calendar years 1984 and 1985.

10. During the period August 5, 1988 to August 15, 1988 KING dictated a cassette tape to Mary Jane Harvey instructing her to prepare false documents to verify non-existent grants from Presbytery of Missouri River Valley and other Presbyterian organizations to CSO for subsequent presentation to the federal grand jury.

11. On or about August 16, 1988 Tom Harvey submitted to IRS Special Agents non-filed Forms 990 for CSO for calendar years 1986 and 1987.

12. On or about August 16, 1988, Mary Jane Harvey forwarded to the grand jury false, fictitious and forged grant documents prepared by Tom and Mary Jane Harvey reflecting grants made to CSO from certain Presbytery organizations totaling $1,647,111.76.

13. On or about August 16, 1988, Tom Harvey submitted to IRS Special Agents false, fictitious and forged grant documents prepared by Tom and Mary Jane Harvey reflecting CSO grants revenue totaling $1,847,111.76.

14. On or about September 6, 1988, Tom Harvey supplied the certified public accounting firm conducting an audit of CSO, Sommer Magnuson, Dawson, P.C. Omaha, Nebraska, false and fictitious ledgers reflecting non-existent church and religious grants received by CSO totaling $2,105,682.00.

15. On or about September 23, 1988, Tom Harvey submitted to IRS Special Agents false FCFCU share account statements for CSO.

16. On or about September 27, 1988 Tom Harvey submitted false and fictitious grant documents to Sommer, Magnuson, Dawson, P.C. prepared by Tom and Mary Jane Harvey reflecting CSO grants revenue of $2,105,682.00.

17. On or about October 12, 1988 Earl Thomas Harvey, Sr. opened U.S. P.O. Box 84912, Lincoln, Nebraska in the name of Board of Ministries.

18. The grand jury alleges and incorporates by this reference each of the transactions and occurrences set forth in the following Counts 2 through 40 as overt acts of the conspiracy which were committed in furtherance of and to effect the objects of the conspiracy set forth in this Count 1 of the indictment.

In violation of Title 18, United States Code, Section 371.

COUNT 2

That on or about the 16th day of May, 1983, in the District of Nebraska, LAWRENCE E. KING, JR., a resident of Omaha, Nebraska, did willfully make and subscribe a Form 990 (Return of Organization Exempt From Income Tax for the calendar year 1982 for Consumer Services Organization, Inc.), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 990 he did not believe to be true and correct as to every material matter in that the said Form 990 listed on line 1(b), Part I, that $226,911.76 of contributions, gifts, grants and similar amounts were received from indirect public support and the said Form 990 had attached to it a schedule of contributions

received totalling over $5,000.00 per year, whereas, as he then and there well knew and believed that the amounts received from indirect public support to be listed on line 1(b), Part I, was overstated by at least $186,411.76, and that the 1) National Committee on the Self-Development of People, United Presbyterian Church, U.S.A., 2) the Domestic and Foreign Missionary Society, Protestant Episcopal Church in the U.S.A., and 3) the United Presbyterian Church in the U.S.A., Presbytery of Missouri River Valley, had not made the contributions so scheduled and listed.

In violation of Title 26, United States Code, Section 7206(1).

COUNT 3

That between on or about the 15th day of May, 1984 and the 13th day of May 1985, in the District of Nebraska, LAWRENCE E. KING, JR., a resident of Omaha, Nebraska, did willfully make and subscribe a Form 990 (Return of Organization Exempt From Income Tax for the calendar year 1983 for Consumer Services Organization, Inc.), which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 990 he did not believe to be true and correct as to every material matter in that the said Form 990 listed on line 1(b), Part I, that $334,955.00 of contributions, gifts, grants and similar amounts were received from indirect public support and the said Form 990 had attached to it a schedule of contributions received totalling over $5,000.00 per year, whereas, as he then and there well knew and believed

that the amounts received from indirect public support to be listed on line 1(b), Part I, was overstated by at least $316,700.00, and that the 1) the Domestic and Foreign Missionary Society, Protestant Episcopal Church in the U.S.A., 2) the Mission Development Grant Fund, United Presbyterian Church, U.S.A., 3) the United Presbyterian Foundation, 4) the Presbyterian Hunger Program, United Presbyterian Church, U.S.A., and 5) the National Committee on the Self-Development of People, c/o Presbytery of Missouri River Valley, had not made the contributions so scheduled and listed.

In violation of Title 26, United States Code, Section 7206(1).

COUNTS 4-7

On or about the dates set forth below in the District of Nebraska, LAWRENCE E. KING, Jr., being an officer and employee, that is Manager/Treasurer, of the Franklin Community Federal Credit Union (FCFCU), an institution whose accounts were then insured by the Administrator and Board of the National Credit Union Administration (NCUA), with intent to defraud said FCFCU and to deceive examiners of NCUA, an agency of the United States, willfully and knowingly did subscribe and certify as correct a NCUA Form 5300 (Statement of Financial Condition) which he then well knew was not correct in that the said Form 5300 substantially understated the total amount of shares and liabilities of the said FCFCU and substantially understated the insured shares and deposits of said FCFCU as of the close of business on the dates

set forth below:

COUNT	CERTIFICATION DATE	STATEMENT CLOSING DATE
4	July 22, 1985	June 30, 1985
5	January 22, 1986	December 31, 1985
6	July 23, 1986	June 30, 1986
7	July 20, 1987	June 30, 1987

All in violation of Title 18, United States Code, Section 1006.

COUNTS 8 THRU 18

A. The allegations of Count 1, Parts A thru D are realleged herein and constitute the allegations setting forth the scheme and artifice to defraud.

B. On or about the dates listed below, in the District of Nebraska, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in Paragraph A of these counts above, LAWRENCE E. KING, JR. knowingly caused to be delivered by mail according to the direction thereon, the following items with the contents so indicated to and from the places indicated.

COUNT	DATE	CONTENTS	FROM	TO
8	8/16/85	Letter & $1,000,000 Certificate and FCFCU check for $4,108.58	FCFCU Omaha, Nebraska	Presentation Sisters, Aberdeen, SD
9	9/5/86	$100,000 Check	Simon Meats Omaha, Nebraska	FCFCU Omaha, Nebraska
10	10/31/86	$25,000 Check	Dubuque Bank Trust Trust Fund Dubuque, Iowa c/o Sisters of Charity	FCFCU Omaha, Nebraska

COUNT	DATE	CONTENTS	FROM	TO
11	1/22/87	$100,000 Check	Edith Winkelmann Omaha, Nebraska	FCFCU Omaha, Nebraska
12	2/13/87	$50,000 Check	Lentz Peace Research Lab. & Character Research Association, c/o James C. Haggard St. Louis, Missouri	FCFCU Omaha, Nebraska
13	9/23/88	$99,000 Check	Savers Life Ins. Winston Salem, North Carolina	FCFCU Omaha, Nebraska
14	5/3/88	$99,000 Check	Charles E. Lakin Enterprises, Omaha, Nebraska c/o Gateway Plaza	FCFCU Omaha, Nebraska
15	5/3/88	$99,000 Check	Charles E. Lakin Enterprises, Omaha, Nebraska c/o Sunfield Citrus	FCFCU Omaha, Nebraska
16	5/9/88	$90,000 Check	Electronic Technologies, Inc. Omaha, Nebraska	FCFCU Omaha, Nebraska
17	8/16/88	$60,000 Check	Mr. & Mrs. Stuart Simon Omaha, Nebraska	FCFCU Omaha, Nebraska
18	8/17/88	$10,000 Check	Frances Dunn Omaha, Nebraska	FCFCU Omaha, Nebraska

C. The above offenses were committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 19 THRU 25

A. The allegations of Count 1, Parts A thru D are realleged herein and constitute the allegations setting forth the scheme and artifice to defraud.

B. On or about the dates listed below, in the District of Nebraska, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in Paragraph A of these counts above, LAWRENCE E. KING, JR. knowingly caused to be transmitted in interstate commerce by means of a wire communication, that is, a bank wire transfer, certain signs, signals, and sounds, from and to as indicated below and in the counts set forth below:

COUNT	DATES	FROM	TO	AMOUNT
19	4/17/85	Fargo National Bank & Trust Fargo, North Dakota for Sisters of Mary	FCFCU FirsTier Omaha, Nebraska	$100,000
20	11/17/86-11/18/86	First El Paso El Paso, Texas for Loretto Academy	FCFCU FirsTier Omaha, Nebraska	$100,000
21	4/5/88-4/6/88	Sunbelt Savings Dallas, Texas for Community School of Performing Arts	FCFCU FirsTier Omaha, Nebraska	$99,000
22	4/6/88-4/7/88	Home Savings of Midland, Sioux Falls, South Dakota for Augustana College	FCFCU FirsTier Omaha, Nebraska	$99,101.71
23	6/15/88-6/17/88	Harris Trust & Savings Bank Chicago, Illinois for Airline Pilots Federal Credit Union	FCFCU FirsTier Omaha, Nebraska	$99,000
24	8/5/88-8/8/88	Bank IV Wichita National, Wichita, Kansas, and Goldome Bank, Buffalo, New York for Riverside Hospital, Inc.	FCFCU FirsTier Omaha, Nebraska	$ 3,000 $96,000
25	9/30/88	Chemical Bank New York, New York for Jane Bernstein	FCFCU FirsTier Omaha, Nebraska	$98,000

C. The above offenses were committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS 26 THRU 34

A. The allegations of Count 1, Parts A thru D are realleged herein and constitute the allegations setting forth the scheme and artifice to defraud.

B. On or about the dates listed below, in the District of Nebraska, ALICE PLOCHE KING and LAWRENCE E. KING, JR. for the purpose of executing and attempting to execute the scheme and artifice to defraud as set forth above in Paragraph A of these counts set forth above, did knowingly cause to be transmitted in interstate commerce from the State of Nebraska to the Adams National Bank in Washington, D.C., a wire communication, that is a wire transfer or funds of FCFCU to the King personal account at the Adams National Bank, in the amounts set forth below, certain signs, signals and sounds:

COUNT	DATE	AMOUNT
26	10/6/86	$1,000
27	10/24/86	$2,000
28	12/1/86	$2,500
29	1/22/87	$3,000
30	3/5/87	$3,000

COUNT	DATE	AMOUNT
31	4/17/87	$1,500
32	5/20/87	$3,000
33	7/6/87	$3,000
34	7/5/88	$1,000

C. The above offenses were committed by and in furtherance of the conspiracy set forth in Count 1 of this indictment and while ALICE PLOCHE KING and LAWRENCE E. KING, JR. were members of said conspiracy.

All in violation of Title 18, United States Code, Section 1343.

COUNT 35

A. From on or about January 1, 1984 to on or about the 4th day of November, 1988, in the District of Nebraska, LAWRENCE E. KING, JR., being an officer and employee, that is, Manager, of Franklin Community Federal Credit Union (FCFCU), an institution whose accounts were then insured by the Administrator and Board of the National Credit Union Administration, willfully and knowingly did embezzle and misapply the sum of $12,124,870 of the moneys, funds, and credits belonging to said FCFCU and under the care, custody and control of LAWRENCE E. KING, JR. as Manager of FCFCU.

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

In violation of Title 18, United States Code, Section 657.

COUNT 36

A. From on or about the 12th day of November 1985 to on or about the 30th day of November 1985, in the District of Nebraska, LAWRENCE E. KING, JR. did knowingly execute and attempt to execute a scheme and artifice to defraud a federally insured financial institution, to wit: the Omaha National Bank (FirsTier Bank) and to obtain moneys, funds and credits owned by and under the control of said financial institution by means of false and fraudulent pretenses, representations and promises by causing and directing a check kiting scheme to obtain funds and credits for Franklin Community Federal Credit Union (FCFCU). It was part of the scheme that when funds in FCFCU's account at Omaha National Bank (FirsTier Bank) were low or in negative balance, individuals would be solicited and directed to write personal checks on their own checking accounts at various insured financial institutions made payable to either FCFCU or Food Services of Omaha, or Food Services of Nebraska or Omaha Food Services, Inc. when the individual checking accounts had insufficient funds to cover the checks. The checks would then be deposited by FCFCU in FCFCU's account at Omaha National Bank (FirsTier Bank). Subsequently, a check drawn on FCFCU would be provided to these individuals for deposit into their personal checking accounts to cover the previously written check by the individual. Thereby, FCFCU would obtain an unauthorized use of the funds and credits of Omaha National Bank (FirsTier Bank) during the "float" period. When the FCFCU checks were returned, entries were made to cover them as

further deposits into FCFCU had been completed in the meantime. The dates, individuals, checks, and financial institutions involved are set forth below:

INDIVIDUALS	CHECK AMOUNT	DATE	FINANCIAL INSTITUTION
Pritchard	$40,000	11/12/85	First National Bank, Omaha, NE
Moore	$45,000	11/12/85	Northern Bank, Omaha, NE
Prystai	$40,000	11/12/85	State Street Bank, Boston, MA
Ladd	$35,000	11/20/85	Norwest Bank, Omaha, NE
Harvey	$35,000	11/20/85	First National Bank, Omaha, NE
Pritchard	$40,000	11/20/85	First National Bank, Omaha, NE

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

In violation of Title 18, United States Code, Section 1344.

COUNT 37

A. On or about the 1st day of November, 1984, in the District of Nebraska, Tom Harvey and Mary Jane Harvey did knowingly execute and attempt to execute a scheme and artifice to defraud a federally insured financial institution, to wit: the Community Bank, Omaha, Nebraska, and to obtain moneys, funds and credits owned by and under the control of said financial institution by means of false and fraudulent pretenses, representations and promises by obtaining loan proceeds of $40,000 from a promissory note executed by Mary Jane Harvey on behalf of Utilities Task Force, Inc. made payable to Community Bank and securing said loan by a false and fictitious Franklin Community Federal Credit Union

(FCFCU) Certificate of Deposit, No. 2473, in the name of Consumer Services Organization, Inc.

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

In violation of Title 18, United States Code, Section 1344.

COUNT 38

A. On or about the 22nd day of March, 1985, in the District of Nebraska, Tom Harvey and Mary Jane Harvey did knowingly execute and attempt to execute a scheme and artifice to defraud a federally insured financial institution, to wit: the Community Bank, Omaha, Nebraska, and to obtain moneys, funds and credits owned by and under the control of said financial institute by means of false and fraudulent pretenses, representations and promises by obtaining loan proceeds of $50,000 from a promissory note executed by Mary Jane Harvey on behalf of Consumer Services Organization, Inc. made payable to Community Bank and securing said loan by a false and fictitious Franklin Community Federal Credit Union (FCFCU) Certificate of Deposit, No. 2706, in the name of Consumer Services Organization, Inc.

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. was a member of that conspiracy.

In violation of Title 18, United States Code, Section 1344.

COUNT 39

A. From on or about the 9th day of June, 1988, to on or about the 17th day of June, 1988, in the District of Nebraska, LAWRENCE E. KING, JR. and ALICE PLOCHE KING, did knowingly execute and attempt to execute a scheme and artifice to defraud the FirsTier Bank, Omaha, Nebraska, an insured financial institution, and to obtain the moneys, funds, credits and assets of said institution by means of false and fraudulent pretenses, representations and promises in that LAWRENCE E. KING, JR. and ALICE PLOCHE KING, did cause to be deposited in the FirsTier Bank through the Franklin Community Federal Credit Union (FCFCU) a bank check drawn on the King account at the Adams National Bank, Washington, D.C. made payable to FCFCU in the amount of $50,000 well knowing that said check would be returned dishonored for payment in order to obtain a temporary increase of FCFCU's balance at FirsTier Bank.

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. and ALICE PLOCHE KING were members of that conspiracy.

In violation of Title 18, United States Code, Section 1344.

COUNT 40

A. From on or about the 11th day of July, 1988, to on or about the 19th day of July, 1988, in the District of Nebraska, LAWRENCE E. KING, JR. and ALICE PLOCHE KING, did knowingly

execute and attempt to execute a scheme and artifice to defraud the FirsTier Bank, Omaha, Nebraska, an insured financial institution, and to obtain the moneys, funds, credits and assets of said institution by means of false and fraudulent pretenses, representations and promises in that LAWRENCE E. KING, JR. and ALICE PLOCHE KING, did cause to be deposited in the FirsTier Bank through the Franklin Community Federal Credit Union (FCFCU) a bank check drawn on the King account at the Adams National Bank, Washington, D.C. made payable to FCFCU in the amount of $100,000 well knowing that said check would be returned dishonored for payment in order to obtain a temporary increase of FCFCU's balance at FirsTier Bank.

B. The above offense was committed during and in furtherance of the conspiracy set forth in Count 1 of this indictment and while LAWRENCE E. KING, JR. and ALICE PLOCHE KING were members of that conspiracy.

In violation of Title 18, United States Code, Section 1344.

A TRUE BILL:

FOREPERSON

RONALD D. LAHNERS
United States Attorney

The United States of America requests that trial of this case be held at Omaha, Nebraska, pursuant to the rules of this Court.

THOMAS D. THALKEN
First Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. ALICE P. KING, et al., Defendant(s).	)	CR 89-0-68 **MAGISTRATE'S FINDINGS AND RECOMMENDATIONS**

Mrs. Alice P. King (King) moves to suppress (filing 179) certain statements she made to agents of the Federal Bureau of Investigation and the Internal Revenue Service on two separate occasions. Two issues are raised by the motion. The first issue is whether or not Mrs. King should have been given her Miranda rights. The second issue is whether or not Mrs. King's statements were otherwise voluntary. Finding that Mrs. King was not in custody and therefore there was no need to advise Mrs. King of her Miranda rights and finding that Mrs. King's statements were voluntary, I recommend that the motion be denied.

I. FACTS

Mrs. King is charged in a multi-count superseding indictment (filing 5) with, among other things, conspiring to defraud the United States by impeding the lawful governmental functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of income taxes, and defrauding the United States by impeding, impairing, obstructing, and defeating the lawful functions of the National Credit Union Administration in supervision, regulation and insurance of deposits of federally

1474-571 -708

insured credit unions, among other things, in violation of 18 U.S.C. § 371.

There were two interviews in this case. The first interview was conducted on March 30, 1989, at the Internal Revenue Service Office in downtown Omaha, Nebraska (government's exhibit A). At the first interview Mrs. King was present together with two IRS special agents, an FBI special agent, and a revenue agent from the Internal Revenue Service. Mrs. King was not represented by counsel at that meeting.

The second meeting took place on May 2, 1989, at the same office (government's exhibit B). At the second meeting Mrs. King was present together with one FBI agent and two IRS special agents. At the second meeting Mrs. King was not represented by counsel.

Sometime in late February or early March of 1989, an agent of the FBI contacted Mrs. King to attempt to set up an appointment to interview her. Mrs. King advised the agent that she was not available for an interview at that time because she was busy with King Catering Company, a family owned business. This contact took place over the telephone. During the course of the conversation Mrs. King and the agent agreed that since she did not have reliable transportation the agent would assist her by picking her up. Mrs. King and the agent agreed that the agent would re-contact her sometime later in March to set up the interview.

Later Mrs. King was contracted by the FBI agent. Mrs. King was told that the authorities wanted to interview her at the IRS building in downtown Omaha, Nebraska, because of the number of

documents which might be examined. At that point, Mrs. King and the agent agreed over the telephone that the meeting would take place at about 1:30 in the afternoon on March 30, 1989. This telephone conversation took place on or about March 20, 1989.

On March 30, 1989, the FBI agent called Mrs. King and the agent and Mrs. King agreed that the agent would pick her up at her place of employment. At the appointed hour the FBI agent, accompanied by another male IRS agent, went in an unmarked 1989 Chevrolet to the business where Mrs. King was working. When they arrived, they asked for Mrs. King but were told she was busy. They waited until Mrs. King was done with her business, and then the three people got into the government vehicle.

The agents and Mrs. King then proceeded to the IRS building in Omaha, Nebraska. On the sixth floor of the IRS building is a conference room were the parties began their conference at approximately 1:30 in the afternoon. Refreshments were offered Mrs. King in the form of coffee.

The conference room contains a large conference table and seating arranged around the table. The entire interview was tape recorded. Mrs. King was informed that the interview was being recorded, and she consented to the recording (government exhibit A at 1). The interview concluded at approximately 3:30 in the afternoon.

Mrs. King stopped the interview by saying that she had a catering affair to attend to in Bellevue, Nebraska, at 4:00 p.m. so that the latest she could stay was about 3:30 p.m. (government

exhibit A at 58). Mrs. King was asked whether the agents could continue with their interview and Mrs. King stated that: "I'd be happy to come in and talk to you, probably would be about the same length of time and same period time." (Government exhibit A at 58). Mrs. King told the agents that she would "check" and "see" and the agents responded they would "pick up" the interview at a later time. (Government exhibit A at 58-59). The interview concluded and Mrs. King was taken back to her place of employment.

At no time during the first interview was Mrs. King threatened or otherwise intimidated by any physical overt act. There were no guns displayed. Mrs. King was told at the beginning of the interview that she was not under arrest and that she was not forced to "come in here and forced to make a statement." (Government exhibit A at 1). Mrs. King was never given her Miranda rights. At the first interview it was apparent that Mrs. King was aware that she under investigation for, among other things, misuse of "bank" funds and tax matters (government exhibit A at 31-32).

The second interview was initiated in much the same way as the first. On May 2, 1989, the agents once again picked Mrs. King up and took her to the same building in Omaha, Nebraska. The interview took place in the same room and the same people were present as at the first interview, with the exception of Mr. Powell, a revenue agent who was not present at the second interview. Mrs. King was specifically advised at the second interview that she was the subject of a grand jury investigation, that she was not required to answer any of the questions

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(government exhibit B at 1). Mrs. King stated that she understood and agreed that the interview could be tape recorded (government exhibit B at 1). The interview started at about 1:30 in the afternoon and concluded at about 3:55 in the afternoon. Mrs. King concluded the interview by saying that she needed to be at another appointment, that "[w]e are ceasing" and that "I'd appreciate a ride." (Government exhibit B at 121). Mrs. King was then given a ride as she had requested.

There were no threats or other coercive action taken with regard to Mrs. King at the second interview. Mrs. King was not given a Miranda rights advisement.

At one point during the second interview Mrs. King indicated that she might need a lawyer, and the context of the statement was that she needed a lawyer's assistance in answering what she considered to be technical legal questions surrounding probate and inheritance matters. The statement is as follows:

SA BAHNEY:	Have you ever been involved with any trusts?
KING:	Have I been involved with any trusts? We have a trust for our son.
SA BAHNEY:	Okay, have you been a recipient of any ah trusts?
KING:	I don't follow you.
SA BAHNEY:	Have you, has, have you received any money from a trust or organization ah . . .
KING:	Have I?
SA BAHNEY:	(unintelligible) such as a trust ah from a relative or somethin' where the money's

being handed down ah have you received any funds from any trust?

KING: Identified as a trust?

SA BAHNEY: Well from a trust if somebody sets it up in a trust that's passed down. (sounds like paper rustling in background)

KING: I don't know I, I'm not sure I know what you're talking about exactly.

SA BAHNEY: Have you received any an inheritance?

KING: Yes.

SA BAHNEY: And wha, what did that consist of?

KING: It was in the form of cash. Money, dollars and bills

SA BAHNEY: (unintelligible) when I say inheritance ah, was this inheritance ah reported through the normal inheritance process of ah probate, that kind of inheritance?

KING: Now I'm, I need a lawyer 'cause you're getting me in a technical area. (commotion in background) I don't understand what you're talking about.

SA BAHNEY: Well, was it recorded in the, the county ah were, were their documents associated with this inheritance?

KING: (sniffs) I don't believe so. I mean I, again you got me where I don't know the terminology to answer your question. I have said earlier in the tape recording that I had, money was left for me and that was money that was left, now whether that went through pro, probate court it went through a will or who knows a trust and that I don't know so the questions you're askin' me really I'm unable to answer because I don't know.

SA BAHNEY: Okay did you see any documents associated with this money that . . .

KING: I just saw the money.

SA BAHNEY: Okay.

KING: I was given the money, nothing, I did not ask any questions other than the fact that it was, I was told it was left for me.

(Government exhibit B at 13-15).

The interviews took place in a conference room where the table was approximately three and one-half feet wide and ten feet long. There were two microphones on the table. The agents were all about 5'11", 180 lbs.

The agents did not plan the interviews with Mrs. King's lawyer in mind, although the agents knew that a "target" letter had been delivered to Mrs. King's lawyer--Bill Morrow. The agents said that they did not give Mrs. King the so-called non-custodial advisement of rights advice that is given to other suspects in other circumstances because Mrs. King was subject to a grand jury investigation and not an administrative investigation. They testified that in circumstances were the IRS is initiating a criminal investigation from an administrative inquiry, as opposed to the grand jury, it is customary to give non-custodial advisement of rights advice which essentially advises a subject of their fifth amendment rights in a non-custodial situation. It is not the custom of the IRS to give the non-custodial advisement of rights to a witness who is a grand jury target.

Mrs. King testified. She said that she is 43 years of age, and that prior to the interviews with the government she had been represented by Mr. Morrow. At the time the interviews took place

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she was aware that Mr. Morrow's representation had ceased and that he was no longer representing her. She testified that she was never given a copy of the target letter.

She testified that at one point in time she had been instructed by Mr. Morrow's law firm not to cooperate with the FBI. She testified that she was never told by the government agents that the statements she made could be used against her. Mrs. King further testified that she agreed to visit with the FBI only because the FBI agent was so forceful over the telephone.

Mrs. King testified that she felt that she was not at the interviews of her own free will, that she had never been interrogated before, and that on one previous occasion, different than the two interviews in question, she had been represented by a lawyer when she was fingerprinted and a handwriting exemplar was taken by government agents.

On cross-examination Mrs. King indicated that she held a Bachelors Decree from a college, that she had assisted in the running of certain family businesses, and that she had served as a chairperson on various civic committees.

Mrs. King is black and the agents are white.

II. LAW

A. NON-CUSTODIAL INTERVIEWS

It is clear that Mrs. King was not entitled to an advisement of rights pursuant to Miranda. Beckwith v. United States, 425 U.S. 341, 344-48 (1976), (holding that although the focus of the investigation may have been on the petitioner when he was

interviewed by the IRS in the sense that his tax liability was under scrutiny, that is not the equivalent of "focus" for Miranda purposes, which involves "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. at 347 (quoting Miranda, 384 U.S. at 444)). Mrs. King was never placed under arrest and her freedom of movement was never restrained in any significant way.

B. VOLUNTARINESS

I find that Mrs. King's statements were voluntary. See 18 U.S.C. § 3501(b). In Mincey v. Arizona, 437 U.S. 385 (1978), the Supreme Court held that the voluntariness of a confession should be evaluated upon the "totality of the circumstances" involved in each case. Id. at 401. The United States Court of Appeals for the Eighth Circuit has followed the "totality of the circumstances" approach and has enumerated several relevant factors in United States v. Rorex, 737 F.2d 753 (8th Cir. 1984). These factors include: (1) analysis of the scene of the interview; (2) analysis of the subjective intent of the agents in question; (3) analysis of the age and experience of the person interviewed, and (4) analysis of the mode and manner of interrogation. Rorex, 737 F.2d at 755-56.

While the defendant in this case was interviewed at the offices of the IRS, she was told on both occasions that she was not under arrest and she was permitted to terminate the interviews on both occasions at the time she desired.

For example, at the first interview as the interview commenced Mrs. King indicated that she recognized that she was not under arrest:

(MCCRERY)	You've appeared here voluntarily, is that right
(KING)	Not exactly.
(MCCRERY)	Well,
(KING)	I was asked to come in.
(MCCRERY)	OK. You were asked, uh, by uh, myself.
(KING)	Yourself, yeah.
(MCCRERY)	And, uh, Joe BREAZIER and Dale BAHNEY to come down and to be interviewed regarding, uh, uh, the investigation of the Franklin Credit Union, right? Is that correct?
(KING)	That's true.
(MCCRERY)	And, uh, you understand that you have not been arrested and that you're not, uh, forced to come in here and forced to make a statement, in that correct?
(KING)	I just felt I was obligated to come in, now I don't (unintelligible)
(MCCRERY)	OK. But, you, do you understand that you're not under arrest?
(KING)	Oh, yeah, I understand that.
(MCCRERY)	OK. And that we picked you up just as, uh, as uh, purely a convenience.
(KING)	Right.
(MCCRERY)	To yourself. Is that correct?
(KING)	That's true.

(Government's exhibit A at 1-2).

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Mrs. King likewise called the first interview to a halt when she wished to leave in order to make a prior appointment:

(KING) I said I, when we started this I said I needed to be back because we had to be, I had to cater a party at 4:00 in Bellevue so the latest I could stay would be 3:30 and it's 3:30.

(BAHNEY) O.K. Is there another time we could, uh?

(KING) I'd be happy to come in and talk to you, probably would be about the same length of time and same period of time.

(BAHNEY) O.K. And, uh...

(KING) I need to check and see.

(BAHNEY) O.K. Any other questions?

MCCRERY) Well, then, we'll, we'll call this quits, uh, for today and then pick it up, uh.

(KING) OK.

(Government's exhibit A at 48-59).

Likewise, when the second interview commenced Mrs. King was told she was not required to answer any of the questions:

SA BAHNEY: Okay. Uhm again this is ah, ah you are the subject of a, of a grand jury investigation you're providing this information uhm on your own free will if ah you have a problem with ah responding to certain questions here you're not required to answer any of the questions opposed [sic].

(Government's exhibit B at 1).

Moreover, when Mrs. King had to leave the second interview because of a prior appointment, she simply announced her intention and the interview immediately ceased:

KING: It is past four o'clock and I did say I needed to be someplace at four o'clock.

SA BAHNEY: Okay so (unintelligible)

KING: We are ceasing.

SA BAHNEY: Okay. And that's all we need ...

KING: I'd appreciate a ride.

SA BAHNEY: Okay.

(Government's exhibit B at 121).

Thus the fact that Mrs. King knew that she was not under arrest and the fact that she terminated the interviews at her election dispels any notion that the place of the interrogation was so intimidating as to constitute a custodial environment. Moreover, it is clear that the law enforcement authorities had no subjective intent to place Mrs. King in custody. Still further, Mrs. King is a mature woman, with a college degree, and there is no reason to assume that Mrs. King believed that she was automatically in custody simply because she was being interviewed. Also, it appears that Mrs. King knew that she was the subject of an investigation and it appears that she knew generally about what the investigation was all about. While the questioning was at times blunt, the mode and manner of questioning in this case was properly restrained in all respects.

The only two factors which suggest that the statements might not be voluntary are the fact that Mrs. King did not have a lawyer present with her and the fact that at one point in the questioning she indicated that she might need a lawyer. As to the first factor, it is obvious that Mrs. King was aware that she had a right to a lawyer since she evidently had previously retained Mr. Morrow.

Moreover, the evidence indicates that Mr. Morrow had told Mrs. King not to consult with the FBI, and she did so nevertheless. Thus, there seems to be no real question that Mrs. King understood that she had a right to have counsel present with her.

As to the statement Mrs. King made about "needing a lawyer" it is apparent from the context of the statement that Mrs. King was not invoking her right to consult with counsel. From the context of the statement--a discussion about probate and inheritance matters--Mrs. King's statement about a lawyer is properly understood to mean she lacked the ability to answer the question because she did not have legal expertise, not that she wanted the questioning to end so that she could consult with counsel.

In summary, when applying the totality of the circumstances approach to the facts of this case I am persuaded that Mrs. King's statements to the agents were voluntary.

IT IS RECOMMENDED to Judge Cambridge that Mrs. King's motion to suppress (filing 179) be denied.

DATED this 20th day of April, 1990.

Richard G. Kopf
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR, AND ALICE PLOCHE KING, Defendants.	)	CR 89-0-63 MEMORANDUM AND ORDER

IT IS ORDERED that:

1. The motions for a bill of particulars (~~Filings 166 and 177~~) are denied except as provided herein, to wit: to the extent not now stated in the superseding indictment, the government shall provide the defendants and file with the clerk a bill of particulars by May 7, 1990, if the government has knowledge of the particulars, or through the exercise of reasonable diligence can obtain such knowledge, stating with as much specificity as is reasonably possible, the following: (a) the government shall name all known conspirators; (b) the government shall specify the date each defendant joined the conspiracy, the act which the government contends evidences joinder in the conspiracy, the location where that act took place, and the name of any conspirator who was present on the date that act took place; (c) for each overt act alleged in Count 1 (paragraphs E 1 through and including E 18 (including Counts 2 through and including 40 if these counts are also incorporated by reference in Count 1 as overt acts)) the date the overt act occurred, the name of the conspirator who actually did the act or directed that it take place, the location where the overt act took place, and the names of any conspirator who was

present on the date that act took place;

2. The motions (filings 151 and 153) seeking the issuance of subpoenas duces tecum as to Tom Harvey and Mary Jane Harvey are granted as provided herein: (a) the clerk of the court shall issue the subpoenas as requested except that the party subject to the subpoena need not produce any plea agreements or presentence reports and (b) the place of production shall be as jointly agreed by and between counsel for Mr. King and the Government, and (c) the date of production shall be as jointly agreed by and between counsel for Mr. King and the Government, but no later than 21 calendar days prior to trial and no earlier than May 1, 1990;

3. The motions (filings 152, 154 and 155) seeking the issuance of subpoenas duces tecum as to Eric Anderson, Cindy Harvey and Billy Harvey are denied, without prejudice, because it appears that at this stage of the proceedings the motions are intended as a general fishing expedition and the descriptions of the documents sought are overbroad;

4. As suggested by the American Bar Association's Criminal Justice Mental Health Standards, Standard 7-4.12, motions and discovery responses which may fairly be conducted without the personal participation of Mr. King shall be submitted forthwith, and accordingly: (a) the motions for extension of time (filings 180 and 200) are granted in part and denied in part in conformity with this order; (b) within 10 days counsel for Mr. King shall file a notice listing all motions, notices required by the Federal Rules of Criminal Procedure, such as a Rule 12.2 notice, or discovery

responses which cannot be filed because they require in the opinion of counsel the personal participation of Mr. King; (c) otherwise, within 10 days counsel for Mr. King shall file all motions or discovery responses which can be filed because they do not require in the opinion of counsel the personal participation of Mr. King;[1]

5. If Mrs. King has not already done so, she should file within 10 days any pretrial motions she intends to file.

DATED this 22nd day of March, 1990.

BY THE COURT:

Richard G. Kopf
United States Magistrate

[1]Proceedings that might validly be permitted without the participation of Mr. King include motions to suppress or dismiss which do not require the testimony of Mr. King to resolve factual issues, but are essentially predicated on legal grounds alone. Other motions which might validly proceed are discovery related motions in which the testimony of Mr. King is not necessary.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CR. 89-0-63
	)	
vs.	)	
	)	BILL OF PARTICULARS
LAWRENCE E. KING, JR., and ALICE PLOCHE KING,	)	
	)	
	)	
Defendants,	)	

Pursuant to the Court's Order of March 22, 1990 (Filing No. 209), the United States files the following Bill of Particulars:

I.

"(a) the government shall name all known conspirators;"

RESPONSE

1. Lawrence E. King, Jr.
2. Alice Ploche King
3. Mary Jane Harvey
4. Earl Thomas Harvey, Jr.
5. Earl Thomas Harvey, Sr.
6. Cynthia Harvey

II.

"(b) the government shall specify the date each defendant joined the conspiracy, the act which the government contends evidences joinder in the conspiracy, the location where that act took place, and the name of any conspirator who was present on the date that act took place;"

RESPONSE

1. LAWRENCE E. KING, JR. - joined the conspiracy in Omaha, Nebraska in July, 1976 when he and Earl Thomas Harvey, Jr.

fabricated account ledgers at the Franklin Community Federal Credit Union.

2. ALICE PLOCHE KING - joined the conspiracy in Omaha, Nebraska on or about June 14, 1984 when she provided statements to IRS personnel during a tax audit at the Federal Office Building in the presence of Lawrence E. King, Jr.

III.

"(c) for each overt act alleged in Count I (paragraphs E 1 through and including E 18 (including Counts 2 through and including 40 if these counts are also incorporated by reference in Count 1 as overt acts)) the date the overt act occurred, the name of the conspirator who actually did the act or directed that it take place, the location where the overt act took place, and the names of any conspirator who was present on the date that act took place;"

RESPONSE

OVERT ACT	DATE	CONSPIRATOR*	LOCATION	OTHER CONSPIRATORS PRESENT
1-E01	01/15/83	LEK, TH	Omaha, Nebraska	Unknown
1-E02	09/24/84	LEK, TH, MJH	Omaha, Nebraska	Unknown
1-E03	05/13/85	LEK, TH	Omaha, Nebraska	Unknown
1-E04	11/02/88	LEK, TH	Omaha, Nebraska	Unknown
1-E05	11/06/88	LEK, TH	Omaha, Nebraska	Unknown
1-E06	08/24/87	LEK, TH	Omaha, Nebraska	Unknown
1-E06	11/30/87	LEK, TH	Omaha, Nebraska	Unknown

*LEK - Lawrence E. King, Jr.
TH - Earl Thomas Harvey, Jr.
MJH - Mary Jane Harvey
ETH - Earl Thomas Harvey, Sr.
CH - Cynthia Harvey
APK - Alice Ploche King

OVERT ACT	DATE	CONSPIRATOR*	LOCATION	OTHER CONSPIRATORS PRESENT
1-E06	01/06/88	LEK, TH	Omaha, Nebraska	Unknown
1-E06	04/20/88	LEK, TH	Omaha, Nebraska	Unknown
1-E06	06/16/88	LEK, TH	Omaha, Nebraska	Unknown
1-E06	08/08/88	LEK, TH	Omaha, Nebraska	Unknown
1-E07	03/29/88	TH, LEK	Omaha, Nebraska	Unknown
1-E08	08/16/85	TH, LEK	Omaha, Nebraska	Unknown
1-E09	05/13/88	TH, LEK	IRS/CID Office Omaha, Nebraska	Unknown
1-E10	08/05/88	LEK, TH, MJH	FCFCU Main Office Omaha, Nebraska	Unknown
1-E11	08/16/88	TH, LEK	IRS Directors Conference Room Omaha, Nebraska	Unknown
1-E12	08/16/88	LEK, TH, MJH, ETH	Omaha, Nebraska	Unknown
1-E13	08/16/88	LEK, TH, MJH	Omaha, Nebraska/ IRS DD Conference Room	Unknown
1-E14	09/06/88	TH, LEK	Omaha, Nebraska	Unknown
1-E15	09/23/88	TH, LEK	FCFCU Main Location - Omaha, Nebraska	Unknown
1-E16	09/27/88	LEK, TH, MJH	Omaha, Nebraska	Unknown
1-E17	10/12/88	LEK, TH, MJH, ETH	Lincoln, Nebraska	Unknown

*LEK - Lawrence E. King, Jr.
TH - Earl Thomas Harvey, Jr.
MJH - Mary Jane Harvey
ETH - Earl Thomas Harvey, Sr.
CH - Cynthia Harvey
APK - Alice Ploche King

OVERT ACT	DATE	CONSPIRATOR*	LOCATION	OTHER CONSPIRATORS PRESENT
2	05/16/83	LEK, TH	Omaha, Nebraska	Unknown
3	05/13/85	LEK, TH	Omaha, Nebraska	Unknown
4	08/22/85	LEK, TH	Omaha, Nebraska	Unknown
5	01/22/86	LEK, TH	Omaha, Nebraska	Unknown
6	07/23/86	LEK, TH	Omaha, Nebraska	Unknown
7	07/20/87	LEK, TH	Omaha, Nebraska	Unknown
8	08/16/85	TH, LEK	Aberdeen, South Dakota	Unknown
9	09/05/86	LEK, TH	Omaha, Nebraska	Unknown
10	10/31/86	LEK, TH	Omaha, Nebraska	Unknown
11	01/22/87	LEK, TH	Omaha, Nebraska	Unknown
12	02/13/87	LEK, TH	Omaha, Nebraska	Unknown
13	09/23/88	LEK, TH	Omaha, Nebraska	Unknown
14	05/03/88	LEK, TH	Omaha, Nebraska	Unknown
15	05/03/88	LEK, TH	Omaha, Nebraska	Unknown
16	05/09/88	LEK, TH	Omaha, Nebraska	Unknown
17	08/16/88	LEK, TH	Omaha, Nebraska	Unknown
18	08/17/88	LEK, TH	Omaha, Nebraska	Unknown
19	04/17/85	TH, LEK	Omaha, Nebraska	Unknown
20	11/17/86	TH, LEK	Omaha, Nebraska	Unknown
21	04/05/88	LEK, TH	Omaha, Nebraska	Unknown

*LEK - Lawrence E. King, Jr.
TH - Earl Thomas Harvey, Jr.
MJH - Mary Jane Harvey
ETH - Earl Thomas Harvey, Sr.
CH - Cynthia Harvey
APK - Alice Ploche King

OVERT ACT	DATE	CONSPIRATOR*	LOCATION	OTHER CONSPIRATORS PRESENT
22	04/06/88	LEK, TH	Omaha, Nebraska	Unknown
23	06/15/88	TH, LEK	Omaha, Nebraska	Unknown
24	08/05/88	LEK, TH	Omaha, Nebraska	Unknown
25	09/30/88	LEK, TH	Omaha, Nebraska	Unknown
26	10/06/86	TH, LEK, APK	Omaha, Nebraska	Unknown
27	10/24/86	TH, LEK, APK	Omaha, Nebraska	Unknown
28	12/01/86	TH, LEK, APK	Omaha, Nebraska	Unknown
29	01/22/87	TH, LEK, APK	Omaha, Nebraska	Unknown
30	03/05/87	TH, LEK, APK	Omaha, Nebraska	Unknown
31	04/17/87	TH, LEK, APK	Omaha, Nebraska	Unknown
32	05/20/87	TH, LEK, APK	Omaha, Nebraska	Unknown
33	07/06/87	TH, LEK, APK	Omaha, Nebraska	Unknown
34	07/05/88	TH, LEK, APK	Omaha, Nebraska	Unknown
35	01/01/84	LEK, APK, TH	Omaha, Nebraska	Unknown
36	11/12/85	LEK, TH	Omaha, Nebraska	Unknown
36	11/20/85	LEK, TH, MJH	Omaha, Nebraska	Unknown
37	11/01/84	LEK, TH, MJH	Omaha, Nebraska	Unknown
38	03/22/85	LEK, TH, MJH	Omaha, Nebraska	Unknown
39	06/09/88	LEK, APK, TH MJH	Omaha, Nebraska	Unknown
40	07/11/88	LEK, APK, TH MJH	Omaha, Nebraska	Unknown

*LEK - Lawrence E. King, Jr.
TH - Earl Thomas Harvey, Jr.
MJH - Mary Jane Harvey
ETH - Earl Thomas Harvey, Sr.
CH - Cynthia Harvey
APK - Alice Ploche King

Respectfully submitted,

United States of America,
Plaintiff,

RONALD D. LAHNERS
United States Attorney

By: THOMAS D. THALKEN
First Assistant U.S. Attorney

And: JOEN GRANT
Assistant U.S. Attorney
P.O. Box 1228-DTS
Omahas, Nebraska 68101
(402) 221-4774

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by placing same in the U.S. Mails, postage prepaid, this 14th day of May, 1990:

Jerold Fennell
Attorney at Law
Suite 225, Regency Court
120 Regency Parkway Drive
Omaha, Nebraska 68114

Steven E. Achelpohl
Attorney at Law
100 Historic Library Plaza
1823 Harney Street
Omaha, Nebraska 68102

First Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. ALICE PLOCHE KING, Defendant.	)	Case Number: CR89-0-63 MEMORANDUM IN SUPPORT OF A MOTION FOR A BILL OF PARTICULARS

STATEMENT OF FACTS

Alice P. King, Defendant, faces a 12 count indictment in a complex criminal case. Count I of the indictment is a conspiracy charge, alleged to have spanned over a 12 year time frame; July 1, 1976 to May 19, 1989 (date of indictment). Defendant faces 11 other counts of wire fraud, allegedly spanning from October 6, 1986 to July 19, 1988.

STATEMENT OF CASE

In order for Defendant to avoid unfair surprise at trial, the Government must provide more information, especially regarding the conspiracy charge, that Defendant may know if she has an alibi for the Government's allegations. Defendant cannot be expected to know her whereabouts on any given day for a period of 12 years. Defendant also is entitled to a bill of particulars if necessary to prepare a defense. It is necessary Defendant know exactly what time the Government alleges the conspiracy began and when Defendant joined. Defendant, likewise, needs information as to where the wire transfers occurred and who was present, in order to marshall a defense.

STANDARDS OF REVIEW

I. SMITH AND GARRETT DEMAND DEFENDANT'S ABILITY TO PREPARE A DEFENSE AND BE FREE FROM UNFAIR SURPRISE.

The primary purposes of a bill of particulars are to inform the defendant of the nature of the charges against him and to prevent or minimize the element of surprise at trial. United States v. Garrett, 797 F.2d 756 (8th Cir. 1986). And in United States v. Smith, 16 F.R.D. 372 (W.D. Mo. 1954), predecessor to Garrett, the Court held the Government must furnish a bill of particulars in a drug conspiracy case by pleading the time of day of offense, when and exact place where defendant had sold drugs, names of persons to whom defendant sold drugs, and whether such persons were in the employ of the Government.

> Its [bill of particulars] proper office is to furnish to the defendant further information respecting the charge stated in the indictment when necessary to the preparation of his defense.

Id, at 374.

In this vein of disclosure, it has been recognized that, in order for the defendant to know against what he must defend, it will often be necessary to require the Government to disclose the time and place of the alleged offense. United States v. Thomas, 299 F. Supp 494 (D.C. Mo. 1968) and the names of the persons present when the offense took place. Will v. United States, 88 S. Ct. 269, 275 (1967).

Moreover, in conspiracy cases, it is often difficult to tell when the defendant is claimed to have joined the conspiracy and it is often difficult to determine what the defendant is alleged to have done to further the conspiracy; hence, courts often require additional facts to be added to adequately define the offense. United States v. Garrett, 797 F.2d at 665. This is the case at hand. Count I of the indictment carries with it a punishment dictated by the full breadth of the conspiracy allegation and could, therefore, result in a sentence based on a loss of $39,000,000 dollars from Franklin Community Federal Credit Union. It is vital Defendant is apprised as to when she joined and how she furthered, the conspiracy, in order to prepare a defense.

Defendant must have information about meeting(s) or conversations with co-conspirators (indicted or unindicted) regarding the alleged cover-up of theft, in order that Defendant is not unfairly surprised at trial.

> [If] the Government is aware of such meetings, it should be required to disclose them, if the Government will rely upon such "meetings". Otherwise, the defendants ... lack the ability to prepare for trial. Under the Government's theory, each of the defendants would be required to be prepared to rebut claims of participation ... for each day of the year for over 9 years. The possibility of surprise at trial is simply overwhelming under the circumstances.

United States v. Misle Bus & Equip. Co., CR 89-0-12 (D. Neb. April 20, 1989) (Memorandum & Order of Magistrate Richard G. Kopf), aff'd, (June 20, 1989) (Order of Judge William G. Cambridge). Defendant cannot be expected to prepare a defense to the lengthy and complex conspiracy at hand, without the information requested.

II. THE 1966 AMENDMENT TO FED. R. CRIM. P. 7(f) ENCOURAGES GRANTING OF A BILL OF PARTICULARS.

Fed. R. Crim. P. 7(f) was amended in 1966 by striking the limitation that a bill of particulars could be ordered only "for cause." The amendment was expressly designed "to encourage a more liberal attitude by the courts towards bills of of particulars." Fed. R. Crim. P. 7 comment to 1966 amendment. Stated simply, Rule 7 encourages pleading sufficient facts so that the defendant knows what the Government contends about: when the crime was committed, who committed the crime, what the crime was, and where the crime was committed. United States v. Yasinski, CR 89-0-57 (D. Neb. August 4, 1989) (Memorandum & Order of Magistrate Richard G. Kopf).

The Government has alleged Defendant provided false and misleading statements and testimony in order to cover up involvement in the conspiracy. The who, what, when and where questions have not been adequately answered by the Government as to this charge. Defendant thus meets the burden of the Fed. R. Crim. P. 7(f) and the Government must be required to grant the requested information. United States v. Martin, CR 89-0-67 and CR 89-0-68 (D. Neb. August 2, 1989) (Memorandum and Order of Magistrate Richard G. Kopf). The Martin Court held in a drug conspiracy case, a bill of particulars, requiring: the exact dates and locations of the alleged overt acts, whether plead or not; exact dates and locations of receipt or distribution of a controlled substance done in furtherance of the conspiracy; and the dates when the defendants joined the conspiracy. See also, United States v. Franks, CR 89-0-91 (D. Neb. July 31, 1989) (Memorandum and Order of Magistrate Richard G. Kopf); United States v. Cano, CR 88--103 (D. Neb. March 16, 1989) (Memorandum and Order of Magistrate Richard G. Kopf.

Likewise, as to the charges of wire transfers, the Government has not answered who committed the crime or where the crime was committed and the failure to sufficiently define the alleged crime in the indictment must be cured in the bill of particulars.

Based on the foregoing facts and authorities, the motion for a bill of particulars must be granted.

ALICE P. KING, Plaintiff

By _____

Jerold V. Fennell #11266
Suite 270 Regency Court
120 Regency Parkway
Omaha, NE 68114
(402) 393-1286
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has personally served copies of the Memorandum in Support of a Motion for a Bill of Particulars on the following: Steve E. Achelpohl of 100 Historic Library Plaza, 1823 Harney Street, Omaha, Nebraska 68102 and Assistant U.S. Attorney Thomas D. Thalken, Federal Building, Omaha, Nebraska 68102 on the 8th day of February, 1990.

Elliott J. Peterson

OM 147A-571
LWB:ses

The following investigation was conducted at Lincoln, Nebraska, by Investigative Assistant [redacted] b6 b7C

On May 16, 1990, contact with the Secretary of State, Corporation Division, State Capitol, for any information concerning a S&P PRODUCTIONS or an S&P IMAGES, was negative.

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(402) 346-6112

May 23, 1990

b6
b7C

[redacted]
Warden
Federal Medical Center
P.O. Box 4600
Rochester, Minnesota 55903-4600

RE: [redacted]
Regulation No.: 12834-047
Docket No.: 89-0-63

Dear Warden [redacted]

Enclosed please find a memorandum with attachments, in connection with the above-referenced individual.

Sincerely,

[redacted]
For the firm

SEA:bjo
Enclosure
cc: Honorable Richard G. Kopf, United States Magistrate
cc: [redacted] First Assistant United States Attorney

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MEMORANDUM

INTRODUCTION

This Memorandum is in response to your letter of April 10, 1990, and the letter from District Judge William Cambridge of April 20, 1990, which are attached hereto. Throughout the competency proceedings involving Mr. King, the Court has encouraged counsel to conduct the proceedings consistent with the spirit of the American Bar Association's Criminal Justice Mental Health Standards (ABA Standards). Specifically, the Court has observed that, to the extent possible, the process should be conducted in a non-adversarial manner.

This case has been given microscopic attention by the public media since the Franklin Credit Union closed on November 4, 1988. There has been a daily barrage of inflammatory media coverage of Mr. King, the failure of the Franklin Credit Union, and so-called related investigations for nearly one and one-half years. The Government, as might be expected, has a vested interest in ensuring that the trial of Mr. King goes forward, and that a conviction results. We regard the Government's Memorandum, supplied to you on May 15, 1990, to be a thinly-veiled argument in support of Mr. King's competence to proceed to trial, and a departure from the Court's stated purpose of conducting these competency proceedings in a non-adversarial manner.

We are enclosing a copy of the superseding Indictment which has been filed against Mr. King.

BACKGROUND

The undersigned were appointed under the Criminal Justice Act to represent Mr. King on May 19, 1989, in connection with an Indictment which had been filed against Mr. King and his wife on that date.

After approximately three to four months of investigation of the matter,[1] court-appointed counsel intensified their interviews with Mr. King. These interviews became very focused in approximately August-November, 1989. As a consequence of these interviews, and other matters which had been discovered by counsel, request was made of the Court for authority under the Criminal Justice Act to retain the Menninger Clinic, and Dr. Herbert Modlin, to perform psychological tests and a psychiatric evaluation of Mr. King.

Mr. King visited the Menninger Clinic on December 26 and 27, 1989. Psychological tests were performed on Mr. King, resulting in a report which was prepared by Glenn S. Lipson, a psychologist, which has been supplied to you by the Court and is attached hereto. A psychiatric report was prepared by Dr. Modlin, which remains sealed by the Court and within the attorney-client privilege.[2]

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[1]In the beginning, court-appointed counsel were principally concerned with digesting the large volume of documentary evidence which is involved in this case. The government is holding two rooms full of documents, which defense counsel reviewed shortly following the Indictment in this case.

[2]For this reason, Dr. Modlin's report has not been transmitted to either the Springfield Medical Center, where Mr. King was first evaluated, or to the Rochester Medical Center. Furthermore, Mr. King requested that the report not be disseminated to either institution. Accordingly, in balancing our duties to provide the

Court-appointed counsel continued their interviews with Mr. King and investigation into January of 1990. As a result of these interviews, and other events, counsel became increasingly concerned about Mr. King's mental health. More information was requested from Dr. Modlin by court-appointed counsel with respect to Mr. King's current psychological condition. Dr. Modlin wrote a second report, also privileged and under seal, which was addressed to the issue of Mr. King's competence to stand trial.

On February 7, 1990, this second report was presented to the Honorable Richard G. Kopf, United States Magistrate, who is both supervising Mr. King's pre-trial proceedings, and overseeing the terms of the court-appointment of defense counsel. The purpose for presentment of the letter to Judge Kopf was to support a request for further psychiatric evaluation and treatment of Mr. King, and to advise the Court consistent with counsel's ethical duties about circumstances which had come to the attention of counsel bearing on Mr. King's competence to stand trial. See ABA Standard 7-4.2(c).

This letter prompted the Court to order an evaluation under 18 U.S.C. §4241, et. seq., in respect to Mr. King's competence to stand trial. With defense counsel's consent, Judge Kopf summarized the conclusions of Dr. Modlin in a letter to the Springfield Medical Center, a copy of which was also supplied by the Court and is attached. This letter accurately summarizes the conclusions of Dr. Modlin with respect to Mr. King's competence to stand trial.

Evaluator with as complete information as possible, and yet respect the privileges of our client, we have elected not to disclose the Modlin report.

Following a thirty day evaluation at the Springfield Medical Center, Dr. Dorsey W. Dysart, the Chief of Psychiatry, concluded that Mr. King was suffering from a probable Delusional (paranoid) disorder, grandiose type. Dr. Dysart observed that "[o]ne must also consider the possibility of a bipolar disorder." Dr. Dysart's report has been previously forwarded to you. Following receipt of Dr. Dysart's report, and at the government's request, the parties were afforded the opportunity to question Dr. Dysart in a telephone interview. A transcript of this interview has also been forwarded to you.

Before the competency hearing, court-appointed counsel requested the Court to appoint independent counsel for Mr. King, to assert Mr. King's express desire in connection with the competency proceedings, specifically that Mr. King was competent to stand trial.[3] It was the belief of court-appointed counsel, at this time, that Mr. King was not competent to stand trial, and that his best interests required that counsel take this position at the competency hearing. Independent counsel was appointed by the Court, Mr. Stoler, and he continues as counsel for Mr. King in asserting Mr. King's express interests in the competency proceedings.

At the competency hearing, Mr. King did not actively contest the opinion of Dr. Dysart, but did not join in it either. As a result of the competency hearing, Mr. King was found incompetent to

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[3]Counsel made this request because of a possible conflict of interest between what they perceived to be Mr. King's best interest, and his express interest.

stand trial and was sent to the Rochester Medical Center for treatment.

COMPETENCY ISSUES; MR. KING'S ENVIRONMENT AND COUNSEL'S PERCEPTIONS OF HIS PERSONALITY

In assessing the competence of Mr. King, we believe that one must consider other factors in conjunction with his mental illness including, the complexity of the proceedings, the emotionally charged nature of the proceedings, the length of trial, and the subject matters which the trial will concern. The "functionality approach" of the ABA Standards requires consideration of these kinds of factors in relation to the nature of King's illness. From a practical perspective, Mr. King's mental health cannot be judged in a vacuum. If found to be competent, he will return to Omaha and face the circumstances which he left on February 7, 1990.

We proceed to discuss these circumstances.

First of all, the proceedings against Mr. King are extraordinarily complex. The Indictment charges a conspiracy which lasted some twelve years, allegedly involved the embezzlement of over $12,000,000, allegedly resulting in a loss to the Franklin Credit Union of approximately $39,000,000, and allegedly involved the supporting of several homosexual relationships, at least in part, as the motivation for the claimed embezzlements. The government employed a team of accountants, which examined approximately 76,000 transactions. The government has publicly stated that it interviewed over 400 persons in connection with its investigation of this case. Thus, Mr. King's active participation

in a trial of this magnitude, because of its complexity, is essential.

There has been a daily stream of massive and highly inflammatory publicity concerning this case, in both the print and electronic media. There has been a Nebraska state legislative investigation and congressional hearings regarding the failure of the Franklin Credit Union. The public reaction to this case has been described by observers as a "firestorm", and the statement has been made that Omaha may gossip itself to death over this case. As a result of the closing of the credit union, the Omaha community lost its only low income credit union. In addition to the Indictment in this case, there are currently pending two separate grand jury investigations, one state and the other federal,[4] which concern allegations that child abuse occurred involving Mr. King and other prominent Omahans over a very long period of time.[5] These two investigations have been publicly associated with the failure of the Franklin Credit Union. We enclose a series of newspaper articles which describe the emotionally charged nature of

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[4]In the federal investigation, the government claims that substantial information has been collected regarding alleged activities of Mr. King relating to sex abuse and other matters not germane to the current Indictment, but which appear from our perspective to bear on his mental health. Defense counsel is not privy to this information, despite previous requests for the information. The ABA Standards suggest that the Evaluator should have access to any record or information that he or she regards as necessary for a thorough evaluation of the matter referred. See ABA Standard 7-3.5. We would call upon the government to disclose this information to you, for use in the evaluation in this case.

[5]The allegations are that the former editor of the only daily newspaper in Omaha, the World-Herald, as well as other prominent Omaha businessmen, were involved in these matters.

these proceedings.

The government estimates that the trial on the current Indictment could last six months. The government's case will involve evidence of lavish spending by Mr. King on travel, luxury items, parties (political and personal), clothing, limousines, on his homosexual friends, all allegedly funded through massive embezzlement from the Franklin Credit Union.

As a result of the criminal charges and events surrounding this case, Mr. King has been alienated from his entire world. Prior to the failure of the Franklin Credit Union, Mr. King was a prominent business leader, a high ranking member of the Black Republican Party, member of numerous church organizations, and considered a community leader in Omaha. All of his property was seized and placed under the control of the court shortly after the credit union was closed in November of 1988. He has now been identified in the minds of his friends, associates, and the public in general, as guilty of the allegations which the government has brought against him, involved in a child abuse ring, and also mentally ill.

As to our perceptions of Mr. King's mental condition, we make the following observations:[6]

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[6]We are constrained in what we relate by a number of considerations, including the attorney-client privilege, the work product privilege, and Mr. King's rights under the Federal Rules of Criminal Procedure to not be forced to disclose defense strategy to the Government. On the other hand, we have a duty to relate to an Evaluator relevant information bearing on Mr. King's mental competence to stand trial, keeping in mind that defense counsel may be best situated to observe the Defendant's competence to stand trial. The appropriate guideline, we believe, is ABA Standard 7-

Mr. King has serious problems with the attorney/client relationship. Not only are we getting little information from him relevant to the defense of his case, but we believe he is unable to input the information received from us. From the beginning of our relationship with Mr. King, he has supplied us little, if any, information useful to his defense despite many lengthy interviews with him. The typical interview has: 1. started with defense counsel explaining what topics we wish to cover during the interview; 2. some initial but superficial recognition of this by Mr. King; 3. Mr. King taking over the interview and departing into topics which are largely irrelevant to the subject matter; and 4. his ensuing conversation typically taking on characteristics of what the mental health professionals describe as grandiosity. We have observed this in most every interview we have conducted with Mr. King.

Mr. King's selective memory loss, including blackout spells which he has related to us and his psychiatrists, is troublesome. This directly affects the quality and quantity of information which he is able to provide with regard to the allegations of the Indictment and the information we have collected from various witnesses.

At times, in very structured situations of short duration, Mr. King is seemingly in control of himself and the situation. In

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4.8, which permits defense counsel to relate to the court personal observations of and conversations with the defendant to the extent that counsel does not disclose confidential communications or violate the attorney-client privilege. See also ABA Standard 7-3.5.

unstructured interviews, he is very much prone to take over the interview, and spontaneously discuss what comes to his mind, usually concerning a matter which has nothing to do with the case or the purpose for the discussion. At trial, if he is called to testify, we fear that he is going to have difficulty answering questions in a responsive way, particularly when those questions involve inquiries into unstructured areas. When he is asked a question "why" a certain event occurred, for example, we question his ability, based on what we have observed, to give a logical and accurate response. The longer Mr. King is under pressure, he may start rambling; the more he rambles, the more grandiose and out of touch with the subject matter he might become. When this occurs, we fear he could unwittingly incriminate himself, as well as relate inaccurate and unreliable information to the jury.

The principal difficulty, from our perspective, is in assisting Mr. King in making basic decisions respecting the trial of his case such as whether he should testify in his own behalf. Obviously, Mr. King has the right to decide whether or not to testify; however, we wish to protect his right to make this choice unaffected, to the extent possible, by mental illness.

The problem is aggravated by difficulties in the attorney/client relationship. He is very distrustful of his lawyers. The merits of the case are, from his perspective, irrelevant in defining the responsibility of counsel. The merits of the case are, apparently from his perspective, also irrelevant to what he perceives to be the inevitable outcome.

Because we are in a very real sense out of touch with Mr. King, and he with us, we are concerned that it may be very difficult for us to tell whether he is relating reality or a distorted perception of reality should he testify. We may thus not know if and when to intervene on his behalf, particularly because of the limited information he has been able to give us.

We believe in a lengthy trial that we might see broad fluctuations in this man's personality. These erratic extremes may make it difficult to predict how he's going to react under the circumstances. The more intense trial preparation and the trial itself become, the greater the stress which will be placed on Mr. King's personality. When we have observed Mr. King under stress, his reaction has varied from nonresponsiveness to depression and despondency, to anger and distrustfulness. It appears that many of our attempts to review specific government evidence with Mr. King have resulted in his perceiving such discussions as disloyalty on our part. On the other hand, if Mr. King perceives that we "believe" in him, and have a positive attitude with respect to his case, that is all that is necessary from his perspective, without regard to the merits of the information we are discussing or the damaging impact such information might have on his case. This is a feature of Mr. King's personality which we have observed continually in our interviews, and which is also apparent from the documentary evidence which we have reviewed in this case.

THE GOVERNMENT'S INVESTIGATION

The government began investigating Mr. King and his wife in 1984. The investigation concerned the personal income taxes of Mr. King and his wife for the years 1982 and 1983. The investigation involved a net worth audit; that is, the government was investigating the difference between expenditures which they were identifying from Mr. King's records, e.g., bank accounts, and the income which he was reporting on his tax returns. By the summer of 1985, the investigation had been referred to the Criminal Division of the Internal Revenue Service. Mr. King knew, by August 1985, the nature and kind of investigation which the government was conducting, and that it had become a criminal investigation. By 1987, a federal grand jury was investigating the matter and Mr. King was aware of this as well.

Strangely, the government's reconstruction accounting of the Franklin Credit Union has shown that the alleged embezzlement greatly increased during the time that Mr. King knew he was being investigated for criminal violations of the internal revenue laws. Indeed, as the government's investigation intensified, according to the government's own reconstruction, the amount of illicit spending increased, both personally as to Mr. King and with respect to his businesses.[7] Mr. King employed, according to the government's evidence, the use of checking accounts, credit cards, wire transfers and other devices, which appear to be somewhat

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[7]Two of the businesses were purchased late in the alleged conspiracy. Cafe Carnivale was purchased in late 1987 and the Showcase Lounge was purchased in early 1988.

inconsistent with a plan to conceal any conspiracy to embezzle on the scale charged by the government. We enclose a copy of the latest summary, prepared by the government's accountants, showing the yearly progression of what the government claims are the massive embezzlements which occurred from the Franklin Credit Union.

The government's evidence will be that much of the money which the government claims to have been embezzled was directed to the purchase of things which, to characterize it charitably, were bizarre. For example, the government claims that Mr. King purchased a $23,000 chandelier on one of his trips. On another, he purchased a $17,000 ostrich coat and matching pants. The government's accounting shows that hundreds of thousands of dollars every year were spent on flowers. The government alleges that Mr. King traveled everywhere by chartered aircraft. Hundreds of thousands of dollars were allegedly spent on public relations for Mr. King's image. The allegation is made that when Mr. King traveled to Los Angeles or New York, he would stay at hotels like the Beverly Wilshire, and the Helmsley Palace, together with the rest of his entourage. The government alleges that Mr. King spent over $500,000 on one limousine service alone during the 5 year reconstruction period which was analyzed by government accountants. The government alleges that large sums were expended by Mr. King on his homosexual friends, in the form of apartment rentals, furniture, stereo equipment, travel, jewelry and other lavish items. Mr. King, the government alleges, rented a residence on

Embassy Row in Washington, D.C, at a cost of $5,000 per month, and funded the upkeep of the apartment from credit union funds. The government alleges that Mr. King contracted to bring to Omaha the entire Los Angeles cast of La Cage Aux Folles, for a production of the play, at a cost of over $10,000. Mr. King, it is alleged, rented the John Houseman theater in New York City, in order for a dance troupe to practice, at a cost of $15,000. Mr. King, it is alleged, hosted and financed a party at the 1984 Republican National Convention at a cost of $40,000. And the government further alleges that Mr. King financed the production of a videotape, for the 1988 National Republican Convention, at an additional cost of $40,000. The government's records also show that over $100,000 was spent for a party which he hosted at the 1988 Republican National Convention as well as travel and lodging for a large number (more that 20) of his staff, friends and family to attend the convention. Many of the credit union staff were very involved in the detailed planning for these activities. The government also attributes a large amount of money to the many parties Mr. King held in Omaha. Again, virtually all of these expenditures occurred, says the government, while Mr. King knew he was under criminal investigation by the Internal Revenue Service, FBI and, eventually, a federal grand jury.[8]

In November of 1988, all of Mr. King's assets were seized by the National Credit Union Administration (NCUA). The NCUA found

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[8]We enclose for your reference the 1987 year-end summary of the American Express Gold and Platinum cards in the name of Lawrence E. King, Jr.

very little, if any, money in savings, stocks, bonds or other financial investments.

When the credit union was closed, the NCUA seized all of the books and records of the credit union. Many of the records were personnel files. Some of the documents contained in these files, particularly memos from Mr. King to various persons, might give some insight into his personality. We enclose a sample of these memos for your review.

In approximately 1988, Mr. King caused a resume to be prepared. We also enclose the resume for your review.

CONCLUSION

If we can provide any further information to you, please contact the undersigned.

Steven E. Achelpohl #10015
Marilyn N. Abbott #16339
Schumacher & Achelpohl
1823 Harney St., Suite 100
Omaha, Nebraska 68102-1908
(402) 346-9000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOUCHE KING, Defendant(s).	)	CR 89-0-63 **MAGISTRATE'S FINDINGS AND RECOMMENDATIONS**

Presented to me are the motions for change of venue (filings 175 and 178) submitted by Mr. and Mrs. King, and Mrs. King's motion for severance (filing 242). Although these motions are not case dispositive, in the exercise of my discretion I will issue findings and recommendations to Judge Cambridge on all three motions. I recommend that such motions be denied, without prejudice to reassertion at a later time.

I.

Although Larry and Alice King have been charged with a variety of crimes, since they have not been tried or convicted they are presently innocent as a matter of fact and presumed to be so as a matter of law. From these principles, to which all fair-minded people subscribe, counsel for the defendants move for a change of venue prior to any effort to pick a jury. Counsel contend the publicity surrounding this case has been so massive and so inflammatory as to establish a presumption that the defendants cannot receive a fair trial from a jury which has been subjected to such publicity. While agreeing that the publicity surrounding this case has been massive, and in some cases inflammatory, I disagree that the publicity has been sufficiently inflammatory so

as to raise a presumption that venue ought to be changed prior an effort to select a jury.

The Eighth Circuit has repeatedly declared a preference that motions for transfer await voir dire. **United States v. Bliss**, 735 F.2d 294, 297 (8th Cir. 1984); **United States v. Brown**, 5409 F.2d 364, 377 (8th Cir. 1976). The court has said that:

> A pretrial venue change is called for only in those situations where the pretrial publicity in a community is so extensive and inflammatory as to raise a presumption that an impartial jury could not be seated there. **See Poludniak**, 657 F.2d at 955; **United States v. McNally**, 485 F.2d 398, 402 (8th Cir. 1973), **cert. denied**, 415 U.S. 978, 94 S. Ct. 1566, 39 L.Ed.2d 874 (1974). As the Supreme Court recognized in **Beck v. Washington**, 369 U.S. 541, 557, 82 S. Ct. 955, 964, 8 L.Ed.2d 98 (1961), the inquiry is whether the "pretrial publicity was so intensive and extensive or the examination of the entire panel revealed such prejudice that a court could not believe the answers of the jurors [regarding their impartiality] and would be compelled to find bias or preformed opinion as a matter of law."

Bliss, 735 F.2d at 298.

It would likely only serve to generate more publicity to describe in detail the publicity surrounding this case. Competent counsel for the parties have provided in the record an extensive state-wide sampling of the publicity. Suffice it to say that the publicity has been extensive,[1] and, regrettably, in some instances,

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[1]In the counties that comprise the Omaha and Lincoln jury wheels the publicity has been extensive. However, in the counties which comprise the North Platte jury wheel the publicity has been minimal, except for the state-wide circulation of the Omaha World Herald. (Exhibits 2, 4, 13 and 14 (received 4-16-90)).

inflammatory.[2] But, on balance, the publicity has not been such as to raise the presumption that this case should be transferred even before the Court and counsel try to pick an impartial jury. The motions for change venue should be denied, without prejudice to reassertion during or after voir dire.

II.

Mrs. King moves for severance (filing 242). Essentially, Mrs. King argues that she will be prejudiced by the delay inherent in the finding of incompetency of Mr. King.

Thus, Mrs. King moves for severance pursuant to Fed. R. Crim. P. 14. I do not understand Mrs. King to claim there has been a technical misjoinder under Fed. R. Crim. P. 8. I recommend that the motion for severance be denied, without prejudice to later reassertion.

This case is anticipated to be long, and complex, at least from a document point of view. The estimates of the length of trial range from a minimum of two months to something approaching the neighborhood of six months.

A report is due with regard to Mr. King's competency in early August of 1990. It is reasonably likely, therefore, that a determination of Mr. King's competency will be made sometime within

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[2]The conduct of former Senator John DeCamp (e.g., Exhibit 19(2) (received 4-16-90)) and Congressman Peter Hoagland (e.g., Exhibit 2 (received 5-9-90)), both of whom are lawyers, has been particularly regrettable. Members of the Bar of this Court would be well advised to conform their public remarks to this Court's Rules, Local Rule of Practice 39A, and the ethical rules, Code of Professional Responsibility As Adopted by the Nebraska Supreme Court, D.R. 7-107, governing lawyers admitted to practice in Nebraska.

a reasonable period after the report has been received in August of 1990. 18 U.S.C. § 4241(d)(1).

Mrs. King has asked for continuances to June 4, 1990 (**see** filings 24, 31, 76, and 150). My tentative computations of the Speedy Trial Act deadlines indicates that continuances for which there have been specific Speedy Trial Act exclusions have caused only three "Speedy Trial Act" days to have been used as of June 4, 1990, thereby leaving sixty-seven "Speedy Trial Act" days for use. Thus, even if the motion for severance was granted effective on June 5, 1990, the date on which the Speedy Trial Act "clock" might otherwise begin to run again if Mr. King had not been found incompetent, it is unlikely that the matter would be called for trial until August, 1990, in any event.

Assuming that joinder is proper under Rule 8, there is a strong interest in judicial efficiency and economy served by a joint trial of properly joined counts and defendants, particularly in a case of this complexity. Thus, on a motion for severance under Rule 14, "the defendant has the difficult burden of demonstrating that joinder which complied with Rule 8 was nevertheless so prejudicial as to outweigh the strong interests in judicial efficiency and economy served by joint trial." 8 J. Moore, **Moore's Federal Practice**, ¶ 14.02[1] at 14-3 (2d ed. 1990). In this circuit, the trial court will not be held to have abused its discretion in refusing severance under Rule 14 if the moving defendant fails to establish "clear prejudice" arising out of the joint trial. **United States v. Ferguson**, 776 F.2d 217, 224 (8th

Cir. 1985); **United States v. Dennis**, 625 F.2d 782, 802 (8th Cir. 1980); **United States v. Losing**, 560 F.2d 906, 911 (8th Cir.), **cert. denied**, 434 U.S. 969 (1977). Since the only prejudice which Mrs. King alleges is the delay in trial, and since this time is likely to be relatively short, I conclude that the motion for severance should not be granted because there has been no "clear prejudice" established by Mrs. King.

IT IS RECOMMENDED to Judge Cambridge that:

1. the motions for change of venue (filing 175 and 178) be denied, without prejudice to reassertion during or after voir dire;

2. the motion for severance (filing 242) be denied, without prejudice to later reassertion.

DATED this 23rd day of May, 1990.

Richard G. Kopf
United States Magistrate

FEDERAL BUREAU OF INVESTIGATION

1/13/89

Date of transcription

[redacted] Miami, Florida, [redacted], was contacted concerning [redacted] and advised as follows:

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[redacted] stated [redacted] is married [redacted] She stated the [redacted] name is [redacted] and she sees her once or twice a year when [redacted] comes through Miami. [redacted] advised she has met [redacted] only twice, the last time at least six years ago.

[redacted] went on to state that she was born in, [redacted] on [redacted] and came to the United States in 1977, later moving to Miami in 1978. She advised she first met [redacted] her husband in 1979 or 1980 and has seen [redacted] only once or twice a year since then. She advised she knows nothing about an inheritance that [redacted] may have received and she has no idea what they do for a living or how they spend their money. [redacted] stated she has never sent them an expensive gift and knows nothing about any homes being constructed in [redacted]

[redacted] advised that two years ago, while in [redacted] visited with [redacted] and she had no idea where [redacted] was staying. [redacted] advised she could provide no additional information in that she just does not know them very well.

147-57-717

Investigation on	1/12/89	Miami, Florida	Miami 147A-1762
by	SA [redacted]		File #
	SA [redacted]	BWU:bcc	1/12/89
			Date dictated

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89

The Honorable LEACROFT ROBINSON was interviewed concerning any money which may have been given to [redacted] ROBINSON stated that at no time has he ever given either [redacted] any money. ROBINSON stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of LEACROFT ROBINSON, no other family member gave money to the [redacted]

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147-57-718

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762

by SSA [redacted] WN /dde Date dictated 5/15/89

FD-302 (REV. 3-10-82)

1

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89

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[redacted] was interviewed concerning any money which may have been given to [redacted] stated that at no time has he ever given either [redacted] any money. [redacted] stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of [redacted] no other family member gave money to the [redacted]

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762 147-571-719

by SSA [redacted] /dde Date dictated 5/15/89

FD-302 (REV. 3-10-82)

1

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89

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[redacted] was interviewed concerning any money which may have been given to [redacted] stated that at no time has he ever given either [redacted] any money. [redacted] stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of [redacted] no other family member gave money to the [redacted]

147-571-720

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762-

by SSA [redacted] /dde Date dictated 5/15/89

FD-302 (REV. 3-10-82)

1

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89 b6 b7C

[redacted] was interviewed concerning any money which may have been given to [redacted] stated that at no time has he ever given either [redacted] any money. [redacted] stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of [redacted] no other family member gave money to the [redacted].

147-571-7221

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762

by SSA [redacted] /dde Date dictated 5/15/89

FD-302 (REV. 3-10-82)

1

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89

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[redacted] was interviewed concerning any money which may have been given to [redacted] stated that at no time has he ever given either [redacted] any money. [redacted] stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of [redacted] no other family member gave money to the [redacted]

147-571-722

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762

by SSA [redacted] dde Date dictated 5/15/89

FD-302 (REV. 3-10-82)

1

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/15/89

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[redacted] was interviewed concerning any money which may have been given to [redacted] stated that at no time has she ever given either [redacted] any money. [redacted] stated that the [redacted] family is not wealthy and does not have large amounts of money to give anyone. To the best of the knowledge of [redacted] no other family member gave money to the [redacted]

147-571-723

Investigation on May 10, 1989 at Kingston, Jamaica File # 147A-1762

by SSA [redacted] /dde Date dictated 5/15/89

FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☐ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 5/21/90

TO: SAC, OMAHA (145A-576)

FROM: SAC, MIAMI (145A-1762) (P) (LIAISON OFFICE)

[redacted] PRESIDENT, b6 b7C
FRANKLIN COMMUNITY FEDERAL CREDIT UNION,
OMAHA, NEBRASKA, ET AL;
FRAUD AGAINST THE GOVERNMENT - HUD;
IS TAXES; MF; WF; BF&E,
(OO: OMAHA)

Enclosed for Omaha are seven original 302s concerning above captioned case.

2 - Omaha (147A-571) (Enclosures: 7)
1 - Miami (147A-1762)
WLN:dde
(3)

- 1* -

147-571-724

OC OC

Approved: _____ Transmitted _____ (Number) _____ (Tim

FBI/DOJ

Effective August 9, 1989, a new federal law the **Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA)** prohibits the notification to a customer or any person named in a grand jury subpoena that records are sought by a grand jury.

This new law, codified at 18 U.S.C. Section 1510(b)(1), makes it a felony for an officer or employee of a financial institution, with intent to obstruct a judicial proceeding, to, directly or indirectly, notify any person about the existence or contents of a subpoena for records of the financial institution or information furnished to the grand jury in response to the subpoena. Upon conviction, the officer or employee could be sentenced to five years imprisonment and fined $250,000.

Furthermore, the new law, codified at 18 U.S.C. Section 1510(b)(2), makes it a misdemeanor for an officer or employee to, directly or indirectly notify a customer of the financial institution whose records are sought in the subpoena. Upon conviction, the officer or employee could be sentenced to one year imprisonment and fined $100,000. Note that this misdemeanor violation may occur regardless of the intent of the officer or employee.

You are advised that the sanctions set forth above apply to this subpoena. Please insure that all persons in your institution who handle or have knowledge of this subpoena are aware of the sanctions involved for violation of the non-disclosure provisions of FIRREA.

147A-571-725

05189

United States District Court

FOR THE DISTRICT OF NEBRASKA

TO:

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b7C

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON ☒ DOCUMENTS OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	ROOM
Zorinsky Federal Building - Room 8000 215 North 17th Street Omaha, Nebraska 68101	Grand Jury DATE AND TIME June 12, 1990 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

See attachment

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK	DATE
(BY) DEPUTY CLERK Ann M Burke	May 21, 1990 149A-571-725

This subpoena is issued upon application of the United States of America

ASSISTANT U.S. ATTORNEY

First Assistant U.S. Attorney
P.O. Box 1228-DTS
Omaha, Nebraska 68101
(402) 221-4774

SEARCHED ____ INDEXED ____
SERIALIZED DC FILED DC

MAY 2[illegible] 1990

FBI — FORM OBD-227

*If not applicable, enter "none."

To be used in lieu of AO110

RETURN OF SERVICE[1]

	DATE	PLACE
RECEIVED BY SERVER	5/21/90	Omaha Ne
SERVED	5/22/90	Omaha Ne

SERVED C [redacted] b3 b6 b7C

SERVED BY ~ | TITLE

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER[2]

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 5/22/90
Date

Sig [redacted]

Omaha, Ne
Address of Server

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

FD-515 (Rev.9-20-89)
Accomplishment Report
(Effective 10/1//89)
(Submitt within 30 days from date of accomplishment)

TO: **Director, FBI**

FROM: **SAC, OMAHA**
SUBJECT:

[redacted]
ET AL
FAG _ HUD_IRS
BF&E, WF, MF
OO: omaha

Bureau File Number
147A-571
Field Office File Number
4
Squad or RA Number
[redacted]

Agent's Social Security No.

Date 5/22/90

☒ X if a joint operation with: IRS (identity of other agency)

☐ X if case involves corruption of a public official (Federal, State or Local).

Investigative Assistance or Technique Used

Were any of the investigative assistance or techniques listed below used in connection with accomplishment being claimed? ☐ No ☒ Yes - If Yes, rate each used as follows:
1 = Used, but did not help 3 = Helped, substantially
2 = Helped, but only minimally 4 = Absolutely essential

	Rating		Rating		Rating		Rating
1. Acctg Tech Assistance		8. Eng. Sect. Tape Exams		15. Photographic Coverage		22. Telephone Toll Recs	
2. Aircraft Assistance		9. Hypnosis Assistance		16. Polygraph Assistance		23. UCO Group I	
3. Computer Assistance		10. Ident Div Assistance		17. Search Wa Executed		24. UCO Group II	
4. Consensual Monitoring		11. Informant Information		18. Show Mon Usage		25. UC Other	
5. ELSUR - FISC		12. Lab Div Exams		19. Surveil. Sq (SOG) Ass		26. NCAVC/ VI-CAP	
6. ELSUR - Title III		13. Lab Div Field Suppor		20. SWAT Tea Actbn		27. Visual Inves Analysis (VI	
7. Eng. Sect. Field Support		14. Pen Registers		21. Tech. Agt. Tech Equi			

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b7C
b7E

A. Preliminary Judicial Process (Number of Subjects)

Complaints	Informations	Indictments

B. Arrests, Locates, Summonses or Subpoenas Served (No. of Subj.)

	Subject Priority* A	B	C
FBI Arrests -			
FBI Locates -			
Local Arrests -			

FBI Subj. Resisted _____ ; Armed _____

Subpoenas Served _____
Criminal Summons _____
Local Crim. Summons _____

C. Release of Hostages or Children Located: (Number of Hostages or Children Located)

Hostages Held By Terrorists _____ ; All Other Hostage Situations _____

Missing or Kidnaped Children Located _____

D. Recoveries, Restitutions, or Potential Economic Loss Prevented (PELP) (Explain valuation in remarks)

Property Type Code*	Recoveries	Restitutions	PELP Type Code*	Potential Economic Loss Prevented
	$	$		$
	$	$		$
	$	$		$
	$	$		$
	$	$		$

E. Civil Matters

RICO - Civil Convictions _____ No. of Subj.

	Government Defendant	Government Plaintiff
Civil Suits Amount of Suit	$	$
Settlement or Award	$	$ Enter AFA Payment Here

F. Seizures/Forfeitures

Property Type Code*	Seizures	Forfeitures Judicial	Forfeitures Administrative

G. Administrative Sanctions

Subject 1 — Subject Description Code* -

☐ Suspension ☐ Debarment — Time Frame: Years _____ Months _____ ☐ Permanent

Subject 2 — Subject Description Code* -

☐ Suspension ☐ Debarment — Time Frame: Years _____ Months _____ ☐ Permanent

H. Final Judicial Process: Judicial District NE (District / State) — 4/30/90 (Conviction or Pretrial Div. Date) — 4/30/90 (Sentence Date) — No. of Subjects _____ Acquitted _____ Dismissed

Subject 1 — Subject Description Code* - 8A

☒ Felony ☐ Misdemeanor ☐ Parole Revocation ☐ Probation Revocation

Conviction Title	Section	Counts	Combined Sentence: In-Jail Yrs. Mos.	Suspended Yrs. Mos.	Probation Yrs. Mos.
26	7206	1			

Total Fines $

☐ Plea ☐ Trial ☐ Pretrial Diversion

Add consecutive sentences together.
Enter longest single concurrent sentence.
Do not add concurrent sentences together.
Sentence 10 yrs. - 8 yrs. susp. = 2 yrs. In-Jail.

Subject 2 — Subject Description Code* -

☐ Felony ☐ Misdemeanor ☐ Parole Revocation ☐ Probation Revocation

Conviction Title	Section	Counts	Combined Sentence: In-Jail Yrs. Mos.	Suspended Yrs. Mos.	Probation Yrs. Mos.

Total Fines $

☐ Plea ☐ Trial ☐ Pretrial Diversion

Add consecutive sentences together.
Enter longest single concurrent sentence.
Do not add concurrent sentences together.
Sentence 10 yrs. - 8 yrs susp. = 2 yrs. In-Jail.

Attach additional forms if reporting final judicial process on more than two subjects, and submit a final disposition form (R-84) for each subject.

147-571-725

Remarks: (For every subject reported in Sections A, B, E, G, or H above, provide name, DOB, race*, sex, and if available POB and SSAN.)

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____

[redacted] ENTERED PLEA OF GUILTY AND WAS SENTENCED BY USDJ WILLIAM G. CAMBRIDGE for a violation of T 26, USC 7206, FILING False Tax return. [redacted] was sentenced to 7 months custody of AG plus the special assessment and court cost of $50 plus $75. [redacted] is described as a white male born [redacted].

· Field Office OMAHA (2-147A-571) (1 - 66-3089)
See codes on reverse side.

MAM:kls (4)

FBI/DOJ

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/23/90

[redacted] telephone number [redacted] was telephonically interviewed by Special Agent (SA) [redacted] regarding FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] was previously interviewed regarding FCFCU and was now being interviewed regarding the purchase of a full length fox fur coat in 1987. [redacted] provided the following information:

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[redacted] advised that in the spring of 1987, she received a full length fox or mink coat from [redacted] is also an employee at FCFCU and through conversation with [redacted] learned he could purchase a fox or mink coat for approximately $2,500. [redacted] advised [redacted] purchased the coat she believes with cash in the amount of $2,500 from an unknown furrier outside the Omaha Metropolitan area.

[redacted] advised this coat was paid for in cash by [redacted] for the full amount. [redacted] advised the fox or mink coat does not have any labels or any identifying information regarding where the coat was purchased from.

[redacted] advised she could not provide any further information regarding this purchase and any additional information would have to be obtained from [redacted] who still resides with her.

Investigation on 5/10/90 at Omaha, Nebraska File # OM 147A-9571-727

by SA [redacted] cm Date dictated 5/10/90

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 5/23/90

[redacted] telephone number [redacted] was telephonically interviewed by Special Agent (SA) [redacted] had previously been interviewed regarding FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] was now being interviewed regarding the purchase of a full length fox or mink coat from [redacted] on behalf of [redacted] provided the following information:

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[redacted] advised that in February 1987, approximately around Valentine's Day, he purchased from [redacted] a $2,500 full length fox or mink coat. [redacted] advised that through conversations with [redacted] learned he could purchase a full length mink or fox coat for approximately $2,500. Upon learning of how reasonable a mink coat could be purchased through [redacted] continually requested [redacted] to purchase the coat. At her insistence, [redacted] purchased the coat for approximately $2,500 from [redacted] purchased the coat from a furrier believed to be in New York. [redacted] advised that upon receiving the coat, he became aware of no labels being in the coat identifying the furrier or the type of fur, however, he did not question [redacted] regarding this matter. [redacted] provided him a bill for $2,500 of which [redacted] paid back to him approximately at the same time in February in 1987.

[redacted] advised he formerly owned the ALBERT PACKAGE LIQUOR STORE which burned down in November 1986. All monies received from the liquor store were paid back to the Small Business Administration to pay off the outstanding debt. [redacted] advised that through his job at FCFCU, he was able to save approximately $1,500. Upon saving the money, he frequented the horse races and dog races and parlayed his savings of $1,500 into enough money to pay [redacted] the $2,500 in cash. [redacted] advised he did not retain any receipts or any information regarding the purchase of the coat from [redacted] could not provide any information on whether [redacted] provided him detailed information regarding the purchase other than the coat costing $2,500.

Investigation on 5/10/90 at Omaha, Nebraska File # OM 147A-571 -728

SEARCHED [redacted] INDEXED [redacted]
SERIALIZED [redacted] FILED [redacted]

by SA [redacted] :cm Date dictated 5/10/90

JUN 04 1990
FBI — OMAHA
[redacted]

b6
b7C

[redacted] advised the coat would be held at [redacted] house for further inspection and is willing to cooperate regarding this matter.

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/23/90

[redacted] Bellevue, Nebraska, telephone number [redacted] was interviewed by Special Agents (SA) [redacted] Federal Bureau of Investigation (FBI), and [redacted] Internal Revenue Service (IRS). [redacted] was being interviewed regarding his relationship with [redacted] former employee of FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] provided the following information:

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[redacted]

Investigation on 5/15/90 at Omaha, Nebraska File # OM-[redacted]-729

SEARCHED
SERIALIZED

by SA [redacted] Date dictated 5/15/90

JUN 04 1990

FBI - OMAHA

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 6/20/90

[redacted] voluntarily appeared at the Omaha Division of the Federal Bureau of Investigation (FBI) to be interviewed regarding FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). [redacted] provided the following information:

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b7D

[redacted] advised he appeared without his attorney to be interviewed by Special Agent (SA) [redacted] regarding his employment at FCFCU.

[redacted]

Investigation on 6/11/90 at Omaha, Nebraska File # OM 147A-571 ~730

by SA [redacted] Date dictated 6/15/90

SEARCHED [illegible] INDEXED [illegible]
SERIALIZED [illegible] FILED [illegible]
AUG 28 1990
FBI - OMAHA

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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b7C
b7D

[redacted]

[redacted] advised he cannot provide any further information regarding [redacted] and knows of no agreement between FCFCU and [redacted] or CSO and [redacted] regarding the establishment of share certificates with FUBB customers.

[redacted] advised he is willing to cooperate in this investigation, and is currently working [redacted] in [redacted] Nebraska.

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

- 1 -

147A-571
110P2

Date of transcription 6/20/90

[redacted] Omaha, Nebraska, was interviewed by Special Agent (SA) [redacted] who identified himself as a Special Agent of the Federal Bureau of Investigation (FBI). [redacted] was being interviewed regarding FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU) and CONSUMER SERVICES ORGANIZATION (CSO). [redacted] provided the following information:

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[redacted] advised that she had previously been interviewed by SA [redacted] but was willing to be interviewed regarding further investigation in the above matter. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Investigation on 6/13/90 at Omaha, Nebraska File # OM 147A-571 -73

by SA [redacted] Date dictated 6/15/90

SEARCHED [redacted] INDEXED [redacted]
SERIALIZED [redacted] FILED [redacted]
JUN 28 1990
FBI-OMAHA
[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAWRENCE E. KING, JR. and ALICE PLOUCHE KING,

Defendants.

CR 89-0-63

MEMORANDUM OPINION and ORDER

This matter is before the Court on the magistrate's findings and recommendations (Filing No. 316), and the objections to such findings and recommendations filed by Lawrence E. King, Jr. and Alice Plouche King (Filing Nos. 325 and 326). The magistrate has recommended that defendants' motions for change of venue (Filing Nos. 175 and 178) and defendant Alice King's motion for severance (Filing No. 242) be denied without prejudice to reassertion at a later point in time.

The Court has reviewed de novo those portions of the findings and recommendations to which objection has been made pursuant to 28 U.S.C. § 636(b)(1)(C) and Local Rule 49(B). Despite the defendants' objections, the Court finds that the findings and recommendations should be adopted.

IT IS THEREFORE ORDERED:

1. That the magistrate's findings and recommendations are adopted;

2. That the defendants' motions for change of venue (Filing Nos. 175 and 178) are denied without prejudice to reassertion during or after voir dire; and

3. That defendant Alice King's motion for severance (Filing No. 242) is denied without prejudice to later reassertion.

Dated this 13 day of June, 1990.

BY THE COURT:

WILLIAM G. CAMBRIDGE
United States District Judge

Memorandum

To : SAC, OMAHA (147A-OM-571 Date 6/22/90

RLS/pat

From : SAC, DENVER (94-81 SUB A)

Subject: [redacted], PRESIDENT; b6 b7C
FRANKLIN COMMERCIAL FEDERAL CREDIT UNION,
OMAHA, NEBRASKA;
ET AL;
FAG - HUD;
IRS TAXES; MF; WF; BF&E;
OO: DENVER

It is noted that a polygraph examination was administered to [redacted] at Omaha, Nebraska, on 6/4/90.

The results of this examination have been forwarded to the Polygraph Unit, FBIHQ, for review. Upon completion of this review, the results will be forwarded to your office.

The Bureau cover letter and the Polygraph Examination Report (FD-498) should be filed as serials in your substantive case file. The remaining documents should be filed as 1A exhibits.

(2)- Omaha
2 - Denver
(1 - 94-81 SUB A)
(147A-OM-571)
DAG/lat
(4)

147A-571-733

SEARCHED [ ] INDEXED [ ]
SERIALIZED [ ] FILED [ ]
JUN [illegible]
FBI OMAHA

[redacted]

Effective August 9, 1989, a new federal law the **Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA)** prohibits the notification to a customer or any person named in a grand jury subpoena that records are sought by a grand jury.

This new law, codified at 18 U.S.C. Section 1510(b)(1), makes it a felony for an officer or employee of a financial institution, with intent to obstruct a judicial proceeding, to, directly or indirectly, notify any person about the existence or contents of a subpoena for records of the financial institution or information furnished to the grand jury in response to the subpoena. Upon conviction, the officer or employee could be sentenced to five years imprisonment and fined $250,000.

Furthermore, the new law, codified at 18 U.S.C. Section 1510(b)(2), makes it a misdemeanor for an officer or employee to, directly or indirectly notify a customer of the financial institution whose records are sought in the subpoena. Upon conviction, the officer or employee could be sentenced to one year imprisonment and fined $100,000. Note that this misdemeanor violation may occur regardless of the intent of the officer or employee.

You are advised that the sanctions set forth above apply to this subpoena. Please insure that all persons in your institution who handle or have knowledge of this subpoena are aware of the sanctions involved for violation of the non-disclosure provisions of **FIRREA**.

147A-571-734

05225

United States District Court

FOR THE DISTRICT OF NEBRASKA

TO:

b3
b6
b7C

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON ☒ DOCUMENTS OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	ROOM
Zorinsky Federal Building - Room 8000 215 North 17th Street Omaha, Nebraska 68101	Grand Jury
	DATE AND TIME July 16, 1990 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

See attachment

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK	DATE
(BY) DEPUTY CLERK	June 29, 1990

This subpoena is issued upon application of the United States of America

ASSISTANT U.S. ATTORNEY

First Assistant U.S. Attorney
P.O. Box 1228-DTS
Omaha, Nebraska 68101
(402) 221-4774

*If not applicable, enter "none."

To be used in lieu of AO110

FORM OBD-227
JAN. 86

RETURN OF SERVICE(1)

RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE

SERVED ON (NAME)

[redacted] b3 b6 b7C

SERVED BY [redacted] TITLE Special Agent

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER(2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7/6/90
Date

[redacted]

Address of Server

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

FD-302 (REV. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 6/28/90

[redacted] b6 b7C b7D

Omaha, Nebraska, was interviewed by Special Agent (SA) [redacted] who identified himself as a Special Agent of the Federal Bureau of Investigation (FBI). [redacted] was advised that he was being interviewed regarding his employment with FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU) and CONSUMER SERVICES ORGANIZATION (CSO). [redacted] provided the following information:

[redacted] advised he began his employment in early 1987 and was employed with either FCFCU or CSO for approximately a two year period. [redacted]

[redacted]

Investigation on 6/14/90 at Omaha, Nebraska File # OM 147A-571-735

by SA [redacted] tle Date dictated

[redacted]

SCHUMACHER & ACHELPOHL
ATTORNEYS AT LAW
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
100 HISTORIC LIBRARY PLAZA
1823 HARNEY STREET
OMAHA, NEBRASKA 68102-1908

JAMES R. SCHUMACHER, P.C.
STEVEN E. ACHELPOHL
GREGG H. COFFMAN
MARILYN N. ABBOTT
JOHN W. STEELE
STEPHANIE WEBER MILONE

TELEPHONE:
(402) 346-9000
TELECOPIER:
(402) 346-6112

July 5, 1990

b6
b7C

Mr. [redacted]
United States Assistant Attorney
P.O. Box 1228 DTS
Omaha, NE 68101

RE: US v. [redacted] CR89-0-63

Dear Mr. [redacted]

On July 2nd, we received your letter enclosing the inventory of records prepared by [redacted] for the documents located in the West Omaha Depository. Your letter also identified the number series that apparently has been used based upon the source of documents.

Very shortly after our appointment as attorneys in this case, we received a copy of an inventory for the documents located in the West Omaha Depository. The inventory which you have now forwarded to us contains many additional items which were not identified in any way in the earlier inventory. Specifically, the inventory which you forwarded to our office for the first time notes that the following documents exists:

1. Boxes 548 thru 572 which you indicated in your letter are items obtained from the Credit Union Building after the closure by [redacted] in order to perform his reconstruction.

2. Boxes 1,000 thru 1,025 which you indicate are items subpoenaed by the NCUA in the civil suit.

3. Boxes 1,121 thru 1,138 which you indicate are the work files of the NCUA/Financial Advisory Group.

Let us outline first our specific concerns about each of these types of documents which were previously not identified and then deal with our general concerns.

147A-571-736

BOX 548 THRU 572

When we embarked on this case, you took us on a tour of the Omaha Depository and represented to us at that time that all of the

credit union records had been transferred to that location. However, it appears now that there are various records that were left at the credit union building and only now are we being provided with some type of listing and identification that these documents exists. Note two under the inventory has various dates ranging from November 10, 1989 to December 1, 1989. We would like to know if these are the dates which these documents were transferred from the credit union building to the West Omaha Depository and, if so, why we were not informed. Needless to say, we wish access to these documents because the boxes contain such items, as noted on the index, as information on Erickson-Sederstrom, documents from Mr [redacted] desk, many files on various activities of Mr. [redacted] and his businesses, letters of Erickson-Sederstrom [redacted] travel schedules, and a [redacted] diary for 1986-87.

BOXES 1,000 THRU 1,025

At the outset, we acknowledge that Mr. [redacted] has provided a few of these boxes to our accountants but those boxes were only the documents with regard to Mr. and Mrs. [redacted] personal accounts at various banks and information with regard to [redacted] business accounts. We believe those are denoted as boxes 1,000 thru 1,003. The balance of the boxes relate to bank accounts and credit card accounts of various employees of the credit union and co-conspirators. Specifically, we are concerned that you have never identified the fact that Mr. [redacted] has reviewed and has in his possession copies of numerous bank accounts and credit card accounts for [redacted]. Apparently these documents are mainly contained in box 1,006. Our accountants were given access by Kr. [redacted] to the SLAP account records (one item in Box 1006) but no others.

Regardless of the source of the documents, we assume that these documents have been reviewed by Mr. [redacted] and that fact alone leads us to the conclusion that the information should have been identified to the defense and made available in the past. Needless to say, we wish to have immediate access to all the boxes in the 1,000 series. It is our position that Mr. [redacted] has either been given or requested documents to be subpoenaed civilly under a civil subpoena issued by the NCUA, these documents are nevertheless items which he has used in connection with the reconstruction and they should be made available immediately to the defense. We are very concerned that again administrative procedures are being used to gather information which is relevant to the criminal proceeding and then the government denies access by erecting a "chinese wall".

BOXES 1,100 THRU 1,138

On The previous inventory listed boxes 1,100 thru 1,120. The new

list contains additional boxes of 1,121 thru 1,138. Your letter denotes that this series of boxes are the work files of the NCUA/Financial Advisory Group. The problem with this categorization is that box 1,100 thru 1,117(b) are the files of [redacted] an Omaha attorney who we believe represented both the [redacted] personally and Franklin at various times. I do not see how Mr. [redacted] files could be in any way categorized as work papers of the Financial Advisory Group. Further, a number of months ago we were denied access by Mr. [redacted] to the [redacted] files and [redacted] has talked with you about the problem. Over approximately the last month [redacted] has talked with you on at least three occasion requesting from you that you receive whatever permission is necessary from the NCUA for us to review these files. On each of those occasions you indicated you would be contacting whoever you needed to to make that request on our behalf. As of this date, we have not heard from you in that regard.

In conclusion, please consider this letter a demand by the attorneys for Mr. [redacted] that we be granted immediate access to all of the documents contained on the inventory, except those denoted in boxes 1,118 thru 1,138 (work files). If you will not arrange for us to receive access to these documents, we wish to have you respond in writing as to the reason.

In the event that we are denied access to the records, we will move the Court for an order allowing such access.

We wish to underescore that the failure to identify these documents will prejudice the orderly progression of this case. We will await your response for seven (7) days and in the absence of a response during that time period, we will proceed with a motion for disclosure of the materials.

Very truly yours,

[redacted]

MNA:dw
K/T

OM 147A-571
MAM:jf

The following investigation was conducted by Special Agent [redacted] at Omaha, Nebraska: b6 b7C

On June 28, 1990, [redacted] NATIONAL CREDIT UNION ADMINISTRATION, advised a review of OPPD CREDIT UNION records reflect [redacted] making application for a personal loan of $6,700. The application reflected a mortgage loan of approximately $40,000 and no judgment. Upon review of the credit report regarding [redacted] it was determined [redacted] home mortgage is $164,000, with property value of $89,000 and a judgment of $3,900, from AVCO FINANCIAL SERVICES, Council Bluffs, Iowa. ADLER is of the opinion this is a fraudulent application.

On June 29, 1990, a Grand Jury subpoena was issued to [redacted] b3 b6 b7C

On July 2, 1990, a subpoena was served on [redacted]

On July 2, 1990, Assistant U. S. Attorney [redacted] District of Nebraska, advised [redacted]

147A-571-738

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SERIALIZED ____ FILED ____

JUL 13 1990

FBI-OMAHA

[redacted] b6 b7C

INTERVIEW OF [redacted]

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b7D

On May 12, 1990, at approximately 5:15 p.m., [redacted], Omaha, Nebraska, 68104, telephone number [redacted] was interviewed by Special Investigator [redacted] The interview was conducted at [redacted] residence.

[redacted] was advised that this interview was being conducted pursuant to a telephone call that [redacted] had made to the Special Prosecutor's office concerning information that he might have involving the Franklin Credit Union (FCU) situation.

It should be noted that during the interview with [redacted] was also present, and made comments, but those comments only supported information that [redacted] himself gave.

After being advised by Investigator [redacted] that the Douglas County Grand Jury was looking into allegations of inappropriate sexual conduct concerning individuals associated with the FCU situation, [redacted] voluntarily gave the following information:

[redacted]

[redacted]

147A-571-739

JUL 16 1990

DEPOSITION EXHIBIT 356 6/22/90 KLO

PENGAD-Bayonne, N.J.

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The interview terminated at approximately 7:00 p.m.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. LAWRENCE E. KING, JR. and ALICE PLOCHE KING, Defendant(s).	)	CR 89-0-63 **MAGISTRATE'S FINDINGS AND RECOMMENDATIONS REGARDING MOTION TO DISMISS INDICTMENT (FILING 253)**

Presented to me is the motion to dismiss indictment (filing 253) submitted by the defendant Lawrence E. King, Jr. (King). I will recommend that the motion be denied.

King raises seven arguments which may be summarized as follows:

1. Counts 1 through 40 of the indictment fail to state sufficient facts to constitute offenses against the United States;

2. Counts 1 through 40 are vague and uncertain and fail to contain a plain, concise and definite written statement of the essential facts constituting the offenses sought to be charged;

3. Count 1 fails to allege a conspiracy in accordance with 18 U.S.C. § 371, in that the allegations are overbroad, count 1 of the indictment alleges multiple conspiracies and is therefore duplicitous, and count 1 attempts to allege a twelve-year conspiracy, but fails to allege any overt acts prior to May 15, 1983;

4. Count 2 is barred by the applicable statute of limitations;

5. Counts 2 through 40 are multiplicitous;

6. Count 35 is duplicitous;

7. Count 36 is duplicitous.

I.

On May 15, 1989 (filing 2) the grand jury handed up a sealed indictment against Lawrence E. King, Jr. only, alleging a violation of 26 U.S.C. § 7206(1), occurring on or about the 16th day of May 1983. Essentially the indictment alleged that King willfully subscribed a false Form 990 (Return of Organization Exempt from Income Tax for calendar year 1982 for Consumer Services Organization, Inc.).

On May 19, 1989, the grand jury handed up a superseding indictment (filing 5) which was twenty-six pages long, and brought charges against King and his wife, Alice Ploche King. This superseding indictment (filing 5) charged King with conspiracy, embezzlement, wire fraud, mail fraud, bank fraud, false tax returns, and false entries in credit union books in violation of 18 U.S.C. §§ 371, 657, 1006, 1341, 1343, 1344, and 2, and 26 U.S.C. § 7206(1). Mrs. King was charged also in count 1 (18 U.S.C. § 371), counts 26 through 34 (18 U.S.C. § 1343) and counts 39 through 40 (18 U.S.C. § 1344).

On May 4, 1990 (filing 295), the grand jury handed up a second superseding indictment. This second superseding indictment did not materially change the first superseding indictment. In particular,

in count 2 of the second superseding indictment (filing 295), the government continued to maintain, as it had in the first superseding indictment (filing 5) and as it had in the original indictment (filing 2), that King, on the 16th day of May, 1983 in the District of Nebraska, falsely made and subscribed a Form 990.

Pursuant to my order of March 22, 1990 (filing 209), the government filed its bill of particulars on May 14, 1990 (filing 309). In the bill of particulars the government stated, to the extent of the government's knowledge, the following:

a. the names of all known conspirators;

b. the date each defendant joined the conspiracy, the act which the government contended evidenced joinder in this conspiracy, the location where that act took place, and the name of any conspirator who was present on the date that act took place;

c. for each overt act alleged in count I (paragraphs E1 through and including E18 and including counts 2 through and including 40 as those counts were also incorporated by reference to count I as overt acts), the date the overt act occurred, the name of the conspirator who actually did the act or directed that it take place, the location where the overt act took place, and the names of any conspirator who was present on the date that act took place.

II.

I shall address each of Mr. King's arguments in turn.[1]

As to the first argument raised by Mr. King, that counts 1 through 40 of the indictments failed to state facts sufficient to constitute offenses against the United States, I disagree. The indictments are brought in the language of the relevant statutes and appropriate factual allegations are made to trigger the relevant statutes. It would serve no useful purpose to discuss in detail counts 1 through 40 of the indictments as they speak for themselves.

The second argument advanced by the defendant King is that counts 1 through 40 are vague and uncertain and fail to contain a plain, concise, and definite written statement of the essential facts constituting the offenses sought to be charged. Once again, this appears to be a pro forma motion.

Counts 1 through 40 of the indictments are not vague nor are they uncertain, particularly when read in light of the government's bill of particulars.

The third argument advanced by Mr. King is based upon essentially two subparts.

First, King argues that count 1, the conspiracy allegation, in reality alleges multiple conspiracies and is therefore

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[1]I note that counsel for Mr. King did not submit a brief in support of the motion to dismiss. Counsel indicated to me that they did not desire to brief the issue as they believed the motion did not require briefing. I gave counsel for Mr. King leave to file the motion without the necessity of submitting a brief.

duplicitous.[2] As to the issue of multiple conspiracies, although it is necessary to raise this issue at this time, it is nevertheless difficult to resolve the question simply on the pleadings alone. This is so because normally one must look to the evidence at trial to determine whether the alleged participants shared a "'common aim or purpose'" and whether "'mutual dependence and assistance' existed." **United States v. De Luna**, 763 F.2d 897, 918 (8th Cir.) (citing **United States v. Jackson**, 696 F.2d 578, 582 (8th Cir. 1982), **cert. denied**, 460 U.S. 1073 (1983)), **cert. denied**, 474 U.S. 980 (1985). In **United States v. Mims**, 812 F.2d 1068 (8th Cir. 1987), the United States Court of Appeals for the Eighth Circuit set forth the definition of a conspiracy and the type of evidence which must exist to show a connection between a particular defendant and the conspiracy involved:

> It is established in this circuit that "[t]o convict a defendant of criminal conspiracy, the government is obligated to prove that 'the individual entered an agreement with at least one other person, that the agreement had as its objective a violation of the law, and that one of those in agreement committed an act in furtherance of the objective.'" **United States v. Michaels**, 726 F.2d 1307, 1310-11 (8th Cir.) (quoting **United States v. Evans**, 697 F.2d 240, 244-45 (8th Cir.), **cert. denied**, 460 U.S. 1086, 103 S. Ct. 1779, 76 L.Ed.2d 350 (1983)), **cert. denied**, 469 U.S. 820, 105 S. Ct. 92, 83 L.Ed.2d 38 (1984). "[I]t is not necessary to prove that the defendant knew all of the conspirators or was aware of all the details, but it must be shown that the person 'knowingly contributed . . . efforts in furtherance of it.'" **United States v. Jones**, 545 F.2d 1112, 1115 (8th Cir. 1976), (citation omitted), **cert. denied**, 429 U.S. 1075, 97 S. Ct. 814, 50 L.Ed.2d 793 (1977). Once a conspiracy is established, even slight evidence connecting the defendant to the conspiracy may

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[2]I understand the claim of "overbreath" relates to this duplicity argument.

be sufficient proof of his involvement. **Michaels, supra**, 726 F.2d at 1311 (citing **United States v. Overshon**, 494 F.2d 894, 896 (8th Cir.), **cert. denied**, 419 U.S. 853, 95 S. Ct. 96, 42 L.Ed.2d 85 (1974)).

Mims, 812 F.2d at 1074-75.

The Committee on Model Criminal Jury Instructions for the Eighth Circuit has described the law this way regarding single versus multiple conspiracies:

> If there is evidence that supports multiple conspiracies, then whether a conspiracy is one scheme or several is primarily a jury question. **United States v. Wilson**, 497 F.2d 602 (8th Cir.), **cert. denied**, 419 U.S. 1069 (1974).
>
> With respect to single versus multiple conspiracies, the Eighth Circuit has set forth the following guidelines:
>
> > "The general test is whether there was 'one overall agreement' to perform various functions to achieve the objectives of the conspiracy. A conspirator need not know all of the other conspirators or be aware of all the details of the conspiracy, so long as the evidence is sufficient to show knowing contribution to the furtherance of the conspiracy."
>
> **United States v. Massa**, 740 F.2d 629, 636 (8th Cir. 1984), **cert. denied**, 471 U.S. 1115 (1985); **United States v. Spector**, 793 F.2d 932, 935-36 (8th Cir. 1986), **cert. denied**, 479 U.S. 1031 (1987). Moreover, "[t]he existence of a single agreement can be inferred if the evidence revealed that the alleged participants shared 'a common aim or purpose' and 'mutual dependence and assistance existed.'" **United States v. DeLuna**, 763 F.2d 897, 918 (8th Cir.), **cert. denied**, 474 U.S. 980 (1985) (quoting **United States v. Jackson**, 696 F.2d 578, 582-83 (8th Cir. 1982), **cert. denied**, 460 U.S. 1073 (1983)).
>
> The involvement of a number of separate transactions does not establish the existence of separate conspiracies. **Spector, supra**, 793 F.2d at 935. Likewise the existence of multiple groups of individuals does not preclude one overall conspiracy. **United States v. Peyro**, 786 F.2d 826, 829 (8th Cir. 1986). However a mere overlap of personnel or knowledge of another's illegal conduct is not by itself proof of a single conspiracy. **Id.**

> Whether an indictment charges one or more than one conspiracy is determined under a "totality of the circumstances test" under which the following factors are considered:
>
> (1) time;
>
> (2) persons acting as coconspirators;
>
> (3) the statutory offenses charged in the indictments;
>
> (4) the overt acts charged by the government or any other description of the offenses charged which indicate the nature and the scope of the activity which the government sought to punish in each case; and
>
> (5) places where the events alleged as part of the conspiracy took place.
>
> "The essence of the determination is whether there is one agreement to commit two crimes, or more than one agreement, each with a separate object." **United States v. Thomas**, 759 F.2d 659, 662 (8th Cir. 1985), **cert. denied**, 486 U.S. 1006 (1988) [addressing a double jeopardy claim].

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit, at 139-40 (West 1990) (Committee Comments).

Applying the law to the second superseding indictment, as supplemented by the bill of particulars, I find that at this stage of this case the government has alleged only one conspiracy.

The second prong of King's third argument is that count 1 attempts to allege a twelve-year conspiracy, but fails to allege any overt acts prior to May 15, 1983. I am not sure exactly what is intended by this argument.

To the extent that King argues there is no evidence sufficient to convict him of the allegations of count 1, this issue is not capable of determination without the trial of the general issue,

and, thus, is not properly raised prior to trial. **Fed. R. Crim. P. 12(b).** To the extent that King attacks the second superseding indictment as being returned without sufficient evidence, a district court may not review the sufficiency of the evidence presented to the grand jury, and, in general, may not dismiss an indictment that is, even in the court's view, based on incompetent evidence. **See Costello v. United States**, 350 U.S. 359, 363 (1956).

Moreover, while it is true that the first overt act alleged in the superseding indictment was alleged to have taken place on May 15, 1983 (filing 295, paragraph E1), the second superseding indictment also alleges that it was a part of the conspiracy that in 1976 Mr. Harvey, a coconspirator, and Mr. King, entered into an arrangement which essentially caused King's personal bills to be paid out of funds on deposit at the subject credit union, resulting in shortages of approximately $400,000 by the end of 1976 (filing 295, paragraph D1). And in the government's bill of particulars it is specifically alleged that in July of 1976 Lawrence E. King, Jr. joined the conspiracy in Omaha, Nebraska when he and Mr. Harvey allegedly fabricated account ledgers at the subject credit union (filing 309, paragraph II1). I do not find any precedent which would require the government to allege a specific overt act for each year of the existence of a conspiracy as apparently argued by Mr. King. As a consequence, I see no reason why the indictment is deficient simply because the conspiracy began in July of 1976, but the first overt act upon which the government chooses to rely occurred a number of years later.

The fourth argument alleged by Mr. King is that count 2 of the second superseding indictment is barred by the applicable statute of limitations. It will be recalled that the original indictment in this case was handed up on May 15, 1989, and this indictment, later superseded twice, alleged that on the 16th day of May, 1983 Mr. King unlawfully made and subscribed a false Form 990. Thus, even though the second superseding indictment was not handed up until May 4, 1990 (filing 295), Mr. King was originally charged with the same offense as later alleged in count 2 of the superseding indictments in the original indictment filed on May 15, 1989 (filing 2). The charging statute, 26 U.S.C. § 7201(1), explicitly deals with fraud and false statements, and, therefore, the six-year statute of limitations contained in 26 U.S.C. § 6531(1) is applicable. **See United States v. White**, 671 F.2d 1126, 1133-34 (8th Cir. 1982). Thus, the original indictment was handed up in time since the act took place on May 16, 1983, and the indictment was filed on May 15, 1989 (filings 2 and 295).

The fifth argument advanced by Mr. King is that counts 2 through 40 are multiplicitous. Multiplicity is the charging of a single offense in multiple counts. 8 J. Moore, **Moore's Federal Practice** ¶ 8.03[2] and ¶ 8.07[1] (2d ed. 1990) (comparing duplicity and multiplicity). In this connection, I note that counts 2 and 3 charge a violation of 26 U.S.C. § 7206(1) (false return under penalty of perjury), count 2 involving returns for calendar year 1982, while count 3 involves returns for calendar year 1983. Counts 4 through 7 charge a violation of 18 U.S.C. § 1006 (false

book entry), each count alleging a separate date, spanning a two-year period of time. Counts 8 through 18 charge violations of 18 U.S.C. §§ 1341 (mail fraud) and 2, with each count involving a different check. Counts 19 through 25 charge violations of 18 U.S.C. §§ 1343 (wire fraud) and 2, with each count involving a different date, a different wire transfer, and a different source for the funds transferred. Counts 26 through 34 charge violations of 18 U.S.C. § 1343 (wire fraud) and 2. Each count involves a different wire transmission on a different date with different amounts. Moreover, each count involves different transactions than those alleged in counts 19 through 25. Count 35 charges a violation of 18 U.S.C. § 657 (embezzlement, credit union). Counts 36 through 40 charge violations of 18 U.S.C. § 1344 (scheme to defraud). Each of these counts (35-40) involves different time periods and different acts and different amounts.

Generally speaking "'the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.'" **Blockburger v. United States**, 284 U.S. 299, 304 (1932) (quoted in 8 J. Moore, **supra**, ¶ 8.07[2]). Moreover, the **Blockburger** test is not controlling where there is clear indication of contrary legislative intent to permit cumulative punishments for the same conduct. **See Missouri v. Hunter**, 459 U.S. 359, 368-69 (1983). In this case I need not determine whether or not there was a specific legislative intent for multiple punishments, since I find, applying the **Blockburger** test, that each count requires proof of a fact

which the other counts do not. Accordingly, the claim of multiplicity must fail.

Finally, King asserts in arguments six and seven that count 35 and count 36 of the superseding indictment are duplicitous. Duplicity consists of charging in the same count in an indictment two or more separate offenses. 8 J. Moore, **supra**, ¶ 8.03[2]. In count 35, Mr. King is charged with embezzling from a credit union in violation of 18 U.S.C. § 657 about $12,000,000 (filing 295). The amount of money alleged in the indictment is set forth in one sum, but was said to have occurred between January 1, 1984 to on or about the 4th day of November 1988. In count 36, Mr. King is charged with knowingly executing and attempting to execute a scheme or artifice to defraud a commercial bank in violation of 18 U.S.C. § 1344 by using checks to obtain a "float loan," and the count alleges that on six separate occasions King caused to be deposited checks to create the "float," all in violation of 18 U.S.C. § 1344.

It seems clear that in both counts the government is contending that one offense, as to each count, occurred when on various dates King either embezzled money (count 35), or "floated" checks (count 36). But, King evidently argues that the indictment is duplicitous since the activity took place on more than one date in each count. I do not understand the government to be asking for multiple punishments regarding count 35 or 36; that is, I understand the government to seek only one punishment for a violation of count 35, and only one punishment for a violation of count 36, except to the extent that count 35 or 36 also constitute

overt acts as a part of the conspiracy alleged in count 1. It does not appear to me that multiple offenses have been joined in either count 35 or count 36.

I believe the proper analysis here is as set forth in **United States v. Morse**, 785 F.2d 771, 774 (9th Cir.), **cert. denied**, 476 U.S. 1186 (1986) and 479 U.S. 861 (1986) (citing **United States v. UCO Oil Co.**, 546 F.2d 833, 835 (9th Cir. 1976), **cert. denied**, 430 U.S. 966 (1977)). In that case, the court noted that the difficulty with a duplicitous indictment is that the duplicity precludes assurance of jury unanimity, and may also prejudice a subsequent double jeopardy defense. Thus, in reviewing a duplicity argument, the court determined that it must examine the indictment to determine whether it may fairly be read to charge but one crime in each count. In **Morse**, the defendant was convicted of a mail fraud scheme comprised of four tax shelter investment programs promoted from late 1978 through 1981. The convicted defendants claimed on appeal that the indictment was duplicitous and the district court erred in failing to dismiss on that ground. The court said that it could not hold as a matter of law that a description in the indictment of four investment programs necessarily embraced more than one fraudulent scheme. **Id.**

Applying the rationale of **Morse** to this case, the embezzlement of funds over a period time or the fraudulent scheme of depositing checks over time to create a "float" are but single offenses.

IT IS RECOMMENDED to Judge Cambridge that filing 253 be denied.

DATED this 10 day of July, 1990.

Richard G. Kopf
United States Magistrate